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The *California Regulatory Notice Register* is an official state publication of the Office of Administrative Law containing notices of proposed regulatory actions by state regulatory agencies to adopt, amend or repeal regulations contained in the California Code of Regulations. The effective period of a notice of proposed regulatory action by a state agency in the *California Regulatory Notice Register* shall not exceed one year [Government Code § 11346.4(b)]. It is suggested, therefore, that issues of the *California Regulatory Notice Register* be retained for a minimum of 18 months.

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PROPOSED ACTION ON REGULATIONS

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TITLE 1. OFFICE OF ADMINISTRATIVE HEARINGS

NOTICE OF PROPOSED RULEMAKING

The Office of Administrative Hearings (OAH) proposes to adopt the regulation described below after considering all comments, objections, or recommendations regarding the proposed action.

PROPOSED REGULATORY ACTION

OAH proposes to amend Title 1 of the California Code of Regulations, Division 2, Office of Administrative Hearings, Chapter 1, General APA Hearing Procedures. Specifically, OAH proposes to **amend** sections 1000, 1002, 1004, 1006, 1008, 1012, 1014, 1016, 1018, 1020, 1022, 1024, 1026, 1027, 1028, 1030, 1032, 1034, 1038, 1040, 1042, 1044, 1046, **add** sections 1015, 1019, 1048, and 1050; and **repeal** section 1036.

PUBLIC HEARING

At this time, OAH has not scheduled a public hearing. Any interested person or his or her duly authorized representative may request a hearing pursuant to Government Code section 11346.8 no later than 15 days prior to the close of the comment period.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to OAH. All written comments must be received no later than **October 20, 2003**.

Requests for a public hearing or written comments for OAH's consideration should be directed to the contact person indicated below.

CONTACT PERSON

Inquiries concerning the substance of the proposed action and requests for a copy of the proposed text of the regulations, the initial statement of reasons, the modified text of the regulations, if any, the final

statement of reasons, when prepared, or other information upon which the rulemaking is based should be directed to:

Heather Cline Hoganson
(backup: Janice Richardson)
Office of Administrative Hearings
560 J Street, Suite 300
Sacramento, CA 95814
(916) 322-2536
(backup: (916) 445-4926)

The text of the proposed regulation and the initial statement of reasons will be available at OAH's web site, at <http://www.oah.dgs.ca.gov>.

AVAILABILITY OF STATEMENT OF REASONS & TEXT OF PROPOSED REGULATIONS

The contact person will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at the above address during regular business hours. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulation, the initial statement of reasons, and any data considered. A copy may be obtained by contacting Ms. Hoganson at the address or telephone number listed above.

AVAILABILITY OF CHANGED OR MODIFIED TEXT & FINAL STATEMENT OF REASONS

Following the comment period, OAH may adopt the proposed regulation substantially as described in this notice. If modifications are made which substantially change the originally proposed text, the modified text with changes clearly indicated will be made available to the public for at least 15 days prior to the date on which OAH adopts the regulation. Requests for copies of any modified regulation should be sent to the attention of Ms. Hoganson at the address indicated above. OAH will accept written comments on the modified regulation for 15 days after the date on which it is made available.

If the proposed regulation is not significantly modified, OAH may adopt the proposed amendments to the regulation substantially as described below.

A final statement of reasons will be prepared before the proposed regulation is sent to the Office of Administrative Law. Requests for copies of the final statement of reasons should be sent to the attention of Ms. Hoganson at the address indicated above.

INFORMATIVE DIGEST / OVERVIEW

The Administrative Procedure Act (Government Code 11340–1520) governs agencies with regard to rulemaking and adjudication. Formal Hearings are governed by Chapter 5, Government Code 11500–11529. In addition, many hearings are held under the general hearing provisions of Chapters 4 and

4.5, Government Code 11370–11470.50. The Office of Administrative Hearings (OAH) provides administrative adjudications for state agencies, and has developed rules of procedure for those hearings held under the Administrative Procedure Act.

A complete revision of these rules of procedure has been proposed. Most regulations have technical changes. A few new regulations have been proposed, including procedures for withdrawal as counsel, requesting security, discovery, making changes to a proposed decision, and remanding a decision.

AUTHORITY & REFERENCE

The authority for the proposed regulations is found in the Administrative Procedure Act, Government Code 11370.5(b). This statute authorizes OAH to adopt rules and regulations to carry out the functions and duties of OAH under the Administrative Procedures Act. References include sections in the Code of Civil Procedure, the Government Code, the California Rules of Court, and case law which relates to adjudicative hearings.

DETERMINATIONS

MANDATE ON LOCAL AGENCIES OR SCHOOL DISTRICTS: None

COST OR SAVINGS TO LOCAL AGENCIES OR SCHOOL DISTRICTS: None

EFFECT ON HOUSING COSTS: None

COST OR SAVINGS TO STATE AGENCIES: None

COST OR SAVINGS IN FEDERAL FUNDING TO THE STATE: None

ASSESSMENT OF ECONOMIC IMPACT ON PRIVATE PERSONS OR BUSINESSES; SMALL BUSINESSES: Pursuant to Government Code 11346.5(a)(9), The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. The proposed action does not generate any new costs on private persons, businesses, or small businesses.

ASSESSMENT OF ECONOMIC IMPACT ON BUSINESSES AND JOBS: Pursuant to Government Code 11346.5(a)(7), (8), and 11346.3(a)(2), OAH has made an initial determination that the action will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states, because (a) ordering the record (or transcript) is voluntary and (b) the amount of the record/transcript is not being changed, only who is managing the order. Pursuant to Government Code 11346.3(b)(1), OAH has determined that the proposed regulations will not affect the creation or elimination of jobs within the State of California; the creation of new businesses or the elimination of existing busi-

nesses within the State of California; or the expansion of businesses currently doing business within the State of California.

CONSIDERATION OF ALTERNATIVES

The Office of Administrative Hearings must determine that no alternative considered would be more effective in carrying out the purpose for which the action is proposed or would be as effective as and less burdensome to affected persons than the proposed action.

TITLE 2. FAIR POLITICAL PRACTICES COMMISSION

NOTICE IS HEREBY GIVEN that the Fair Political Practices Commission, pursuant to the authority vested in it by Sections 82011, 87303 and 87304 of the Government Code to review proposed conflict of interest codes, will review the proposed/amended conflict of interest codes of the following:

- Mountains Recreation & Conservation Authority
- California Bay-Delta Authority
- Education Audit Appeals Board

A written comment period has been established commencing on **September 5, 2003** and closing on **October 20, 2003**. Written comments should be directed to the Fair Political Practices Commission, Attention Jeanette Turvill, 428 J Street, Suite 620, Sacramento, CA 95814.

At the end of the 45-day comment period, the proposed conflict of interest code(s) will be submitted to the Commission's Executive Director for his review, unless any interested person or his or her duly authorized requests, no later than 15 days prior to the close of the written comment period, a public hearing before the full Commission. If a public hearing is requested, the proposed code(s) will be submitted to the Commission for review.

The Executive Director or the Commission will review the above-referenced conflict of interest code(s), proposed pursuant to Government Code Section 87300, which designate, pursuant to Government Code Section 87302, employees who must disclose certain investments, interests in real property and income.

The Executive director or the Commission, upon his or its own motion or at the request of any interested person, will approve, or revise and approve, or return the proposed code(s) to the agency for revision and re-submission within 60 days without further notice.

Any interested person may present statements, arguments or comments, in writing to the Executive Director of the Commission, relative to review of the proposed conflict of interest code(s). Any written comments must be received no later than **October 20, 2003**. If a public hearing is to be held, oral comments may be presented to the Commission at the hearing.

COST TO LOCAL AGENCIES

There shall be no reimbursement for any new or increased costs to local government which may result from compliance with these codes because these are not new programs mandated on local agencies by the codes since the requirements described herein were mandated by the Political Reform Act of 1974. Therefore, they are not "costs mandated by the state" as defined in Government Code Section 17514.

EFFECT ON HOUSING COSTS AND BUSINESSES

Compliance with the costs has no potential effect on housing costs or on private persons, businesses or small businesses.

AUTHORITY

Government Code Section 82011, 87303 and 87304 provide that the Fair Political Practices Commission as the code reviewing body for the above conflict of interest codes shall approve codes as submitted, revise the proposed code and approve it as revised, or return the proposed code for revisions and re-submission.

REFERENCE

Government Code Sections 87300 and 87306 provide that agencies shall adopt and promulgate conflict of interest codes pursuant to the Political Reform Act and amend their codes when change is necessitated by changed circumstances.

CONTACT

Any inquiries concerning the proposed conflict of interest code(s) should be made to Jeanette Turvill, Fair Political Practices Commission, 428 J Street, Suite 620, Sacramento, California 95814, telephone (916) 322-5660.

AVAILABILITY OF PROPOSED CONFLICT OF INTEREST CODES

Copies of the proposed conflict of interest codes may be obtained from the Commission offices or the respective agency. Requests for copies from the Commission should be made to Jeanette Turvill, Fair Political Practices Commission, 428 J Street, Suite 620, Sacramento, California 95814, telephone (916) 322-5660.

TITLE 8. DEPARTMENT OF INDUSTRIAL RELATIONS

NOTICE OF PROPOSED RULEMAKING

The Director of the Department of Industrial Relations ("Director") proposes to adopt and amend regulations governing the approval and operation of Labor Compliance Programs by state and local agencies involved with public works construction contracts. The existing regulations are found in Subchapter 4 of Chapter 8, commencing with Section 16425, of Title 8 of the California Code of Regulations. The proposals amendments will add and renumber certain regulations so that Subchapter 4 of Chapter 8 will commence with Section 16421 of Title 8 of the California Code of Regulations. The Director proposes to adopt these amendments and new regulations after considering all comments, objections, or recommendations regarding the proposed action.

PUBLIC HEARING, WRITTEN COMMENT PERIOD, AGENCY CONTACTS

PUBLIC HEARING

A public hearings will be held on the proposals as follows:

October 21, 2003 at 10:00 a.m.
Hiram Johnson State Building
Basement Hearing Room No. 9
455 Golden Gate Avenue
San Francisco, California.

At the hearing, any person may present statements or arguments, orally or in writing, relevant to the proposed action described in the Informative Digest. The Director requests but does not require persons who make oral comments to submit a written copy of their testimony.

WRITTEN COMMENT PERIOD

Any person or authorized representative may submit written comments relevant to the proposed regulatory action to the contact person listed below. The written comment period closes on October 21, 2003, at 5:00 p.m., and the Director will only consider comments received by that deadline. Written comments may be submitted in person at one of the hearings or by letter, facsimile, or e-mail as follows:

Department of Industrial Relations
Office of the Director—Legal Unit
455 Golden Gate Avenue, Suite 9516
San Francisco, CA 94102
Facsimile: (415) 703-4277
E-mail: LCPcomments@dir.ca.gov

AGENCY CONTACTS

Inquiries concerning the proposed regulations may be directed to:

Primary Contact:

John Cumming
Department of Industrial Relations
Office of the Director—Legal Unit
P.O. Box 420603
San Francisco, CA 94142-0603
(415) 703-4265

Back-up Contact:

John Rea
Department of Industrial Relations
Office of the Director—Legal Unit
P.O. Box 420603
San Francisco, CA 94142-0603
(415) 703-4240

Questions about the substance of the proposed regulations may be directed to either Mr. Cumming or Mr. Rea.

AUTHORITY AND REFERENCE

AUTHORITY: Labor Code sections 54, 55, 1742(b), and 1773.5.

REFERENCE: Sections 1798 et seq., Civil Code; Sections 6250 et seq., 6500 et seq. and 87100 et seq., Government Code; Sections 96.7, 224, 226, 1729, 1742, 1771.5, 1771.5(b), 1771.6, 1771.7, 1771.8, 1773.2, 1773.3, 1775, 1776, 1777.1, 1777.5 through 1777.7, 1778, 1779, 1810, 1813, 1815, 1860, 1861, and 3077, Labor Code. Sections 100600, et seq. and proposed Sections 100800 et seq., Education Code; Sections 79500 et seq., Water Code. 2 Cal.Code Reg. Section 18701; and 8 Cal.Code Reg. Sections 16000, 16200(a)(3)(F), 16401, 16500, and 17201–17270.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

OVERVIEW

The laws regulating public works projects require among other things that workers employed on such projects be paid not less than the general prevailing wage rates, as determined under the Labor Code. Public agencies that award public works contracts (known as “Awarding Bodies”) generally are required to inform public works contractors of this requirement, to monitor compliance by obtaining certified payroll reports from contractors, and to withhold contract payments when the relevant enforcing agency determines that a contractor has violated prevailing wage requirements. Prevailing wage laws are enforced primarily by the State Labor Commissioner (also known as the Division of Labor Standards Enforcement). However, under certain circumstances award-

ing bodies may set up their own enforcement agencies, known as “Labor Compliance Programs,” to enforce prevailing wage requirements on public works contracts in which that awarding body participates.

Labor Compliance Programs were authorized with the adoption of Labor Code section 1771.5, that became effective in 1990. Subsection (b) of Labor Code section 1771.5 sets forth the general requirements for operating a Labor Compliance Program. Subsection (a) of section 1771.5 provides that when an awarding body elects to initiate and enforce a Labor Compliance Program for *all* of its public works projects, the threshold contract levels which trigger prevailing wage requirements are raised from \$1,000 (under Labor Code section 1771) to \$25,000 for construction projects and \$15,000 for alteration, demolition, maintenance or repair work. In other words, an awarding body that operates a Labor Compliance Program for all projects enjoys an exemption from requiring prevailing wages for certain low level projects.

In 1992 the Director of Industrial Relations adopted regulations governing the certification, monitoring, and enforcement responsibilities of Labor Compliance Programs. These regulations are found at Subchapter 4, Chapter 8, sections 16425 through 16439 of Title 8 of the California Code of Regulations. The existing regulations generally provide for (1) a process of applying to the Director of Industrial Relations for certification to operate a Labor Compliance Program; (2) ongoing reporting requirements; (3) conducting audits of payroll records as directed by the Labor Commissioner; and (4) enforcing prevailing wage requirements, including by initiating formal enforcement proceedings, under the supervision of and in accordance with the practices of the Labor Commissioner.

The Labor Compliance Program regulations have not been amended since their initial adoption in 1992. However, since that time there have significant changes in the law governing contractor and subcontractor rights, procedures for enforcing and appealing prevailing wage determinations, and circumstances under which awarding bodies are now required to operate a Labor Compliance Program. In particular, the adoption of AB 1646 (Stat. 2000 Chapter 954), effective July 1, 2001, revamped the system governing prevailing wage appeals, replacing the requirement that contractors sue to recover withheld contract payments with a comprehensive administrative hearing and review procedure, with due process guarantees and a further right of appeal to the superior court. In 2002, the Director of Industrial Relations adopted regulations governing this new review system, which

are found at Subchapter 6 of Chapter 8 of Title 8 of the California Code of Regulations, sections 17201 through 17270.

In the latter part of 2002, the voters adopted certain bond measures for school and water bond construction, and the Legislature adopted corresponding legislation codified as new Labor Code sections 1771.7 and 1771.8, which among other things *requires* an awarding body to operate a Labor Compliance Program for projects funded by this bond money. These statutes also added two concepts that were not clearly contemplated in the original standards governing Labor Compliance Programs: (1) the operation of a limited Labor Compliance Program for bond money projects only that would not enjoy the exemption provided by subsection (a) of Labor Code § 1771.5 above; and (2) contracting out with a third party to operate a Labor Compliance Program on behalf of the Awarding Body.

The Director of Industrial Relations is proposing to amend and reorganize the regulations governing Labor Compliance Programs to bring them into conformity with these legislative and other regulatory changes, to address new statutory concepts including the certification of third party programs, and to put the regulations in a more logical and understandable order. These proposals do *not* propose to change or reinterpret laws governing Labor Compliance Programs.

PROPOSED AMENDMENTS TO EXISTING REGULATIONS AND NEW REGULATIONS

The Director proposes to amend the regulations found in Subchapter 4 of Chapter 8 (Office of the Director) of Division 1, sections 16425 through 16439, Title 8 of the California Code of Regulations. The Director proposes to renumber existing regulations, add two new regulations, and combine two others, so that Subchapter 4 will commence with section 16421 [text of current section 16430 with amendments] and conclude with section 16439. The proposals are a combination of substantive and non-substantive changes designed to bring the regulations into conformity with recent legislation, to put the regulations in a more logical order, and to make them more understandable and readable as a whole.

The Director did not consider any alternatives to amending the existing regulations. These regulations have been in place for over ten years, and amendments are necessary to bring them into conformity with significant legislative changes that have occurred since the regulations were first adopted.

The Title to Article 1 of Subchapter 4 would be changed, and the Article would start with section 16421, rather than 16425. Current section 16430

[Components of LCP] would be moved from Article 3 to the beginning of Article 1 as new section 16421.

Section 16421 is an amended version of current section 16430 with an amended title. The current text of section 16430 is being amended to include specific references to “Design-Build” requests and contracts and to remove a sentence concerning self-created payroll forms. An additional subpart (b) is added to specify that when a private entities contract to operate Labor Compliance Programs on behalf of Awarding Bodies, they stand in the shoes of the Awarding Body, including having certain specified responsibilities as public officials. The Director in particular invites comment on whether or not Awarding Bodies have authority outside of the express language of Labor Code sections 1771.7 and 1771.8 to contract out for the operation of a Labor Compliance Program and whether a Joint Powers Authority might be formed to operate a Labor Compliance Program on behalf of more than one Awarding Body.

Section 16422 is an amended version of current section 16425. The changes are non-substantive revisions to grammar and terminology (spelling out Labor Compliance Program and changing “DLSE” to “Labor Commissioner” to be consistent with statutory usage) only.

Section 16423 is a new section stating that an Awarding Body will be unable to use specified bond funding unless it operates an approved Labor Compliance Program, and setting forth the Awarding Body’s duty to make a finding regarding its Labor Compliance Program. Subpart (c) also specifies that the limited exemption from prevailing wages provided by Labor Code section 1771.5(a) is not available unless the awarding body operates a Labor Compliance Program for all of its public works projects.

There is no section 16424, which is being reserved for possible later use.

Section 16425 [replacing current section 16425 which is being renumbered as section 16422] is an amended version of current section 16426 governing initial approval of an Awarding Body’s Labor Compliance Program. Subpart (a)(1) is amended to specify alternatives (to public agency work) for gaining experience with public works compliance issues. Subpart (a)(5) is amended by adding the word “competent” before legal counsel. The balance of the amendments simply spell out of the term Labor Compliance Program.

Proposed new *section 16426* [replacing current section 16426 which is being renumbered as section 16425] would govern approval of third party Labor Compliance Programs. Most of the factors are the same as those governing an Awarding Body’s program under the preceding section, but there are specific variations pertaining to (1) the geographical area in

which the program intends to operate; (2) potential conflicts of interest for third party program operators who may be sponsored by other parties with distinct interests in public works contracts; (3) the third party program operator's understanding of its role and responsibilities as a public agency; and (4) the extent to which the Director's approval of a third party program may extend automatically to any Awarding Body with which the program subsequently contracts. The Director in particular invites comment on this latter question.

Section 16427 governs final approval of a Labor Compliance Program. The proposed amendments are non-substantive only, referring now in subpart (a) to either an Awarding Body or third party entity with initial approval under either of the two preceding sections, changing the term "Awarding Body" thereafter to "applicant" or "Labor Compliance Program," spelling out the term "Labor Compliance Program," and revising the wording of subpart (d) to make it more understandable without changing its meaning.

Section 16428 sets forth the grounds and process for revoking final approval. The amendments add two additional grounds for revocation: (1) pattern of failure to establish violations or to comply with requirements imposed on enforcing agencies in prevailing wage appeal hearings, and (2) failure to comply with laws and reporting requirements pertaining to conflicts of interest and handling of payroll and personnel information. Subpart (c) is modified to specify that notice of revocation be given to the agencies that have contracted with a third party operator. The balance of the amendments are non-substantive, spelling out the term "Labor Compliance Program" and clarifying the language of subpart (b) without changing its meaning.

Section 16429 governs the giving of Notice of Approval. The Director proposes to make this section part of Article 2 covering Approval and Revocation of Approval. The proposed amendments to the section are non-substantive, spelling out the term "Labor Compliance Program," and clarifying the language in subpart (b) without changing its meaning.

There would be no section 16430, although the number would be available for possible future use. Current section 16430 would be moved to section 16421, as discussed above.

The title of Article 3 would be changed to "Reports and Audits" to reflect the content of the two remaining sections.

Section 16431 governs annual reporting requirements. Language is added to subpart (a)(1) to make it applicable to third party operators that do not award contracts. Subpart (a)(5) is added to require ongoing conflict of interest disclosure by third party operators. The balance of the amendments are non-substantive,

including spelling out "Labor Compliance Program" and making the language of subpart (a) more understandable without changing its meaning.

Section 16432 governs a Labor Compliance Program's audit authority and responsibilities. The amendments are non-substantive, changing the term "awarding body" to "Labor Compliance Program" in subpart (a) and spelling out "Labor Compliance Program" in subpart (a)(1).

Article 4 and *Section 16433* pertain to the limited exemption from paying prevailing wages provided by Labor Code section 1771.5(a). Clarifying language is added to subpart (a) of the regulation to indicate that an Awarding Body must operate a Labor Compliance Program for all of its public works projects in order to qualify for the exemption. The word "installation" is added to the enumeration of types of projects in subpart (b).

Section 16434 provides a general statement of the duty of a Labor Compliance Program. The title is amended by changing the term "Awarding Body" to "Labor Compliance Program," and the reference to an awarding body in the first line of the regulation is deleted. The current language is clarified to generally state a duty to comply with law, the Director's prevailing wage decisions, and the Labor Commissioner's practice, while deleting broad references to the Labor Code and regulations which would already be encompassed within the foregoing. A new subpart (b) is added to set forth duties relating to apprenticeship standards.

Section 16435 sets forth definitions and requirements for withholding public works contract payments when a contractor's payroll records are delinquent or inadequate, and current section 16435.5 does the same with respect to underpayment of prevailing wages. The Director proposes to merge the two existing sections into a single section 16435, thereby eliminating some redundancy and confusing cross-referencing in current section 16435.5. The second sentence of subpart (a) is being deleted as unnecessary and obsolete under current law. The words "including a Design-Build contract" are being added to the enumeration of applicable contracts in subpart (b). In subpart (d)(3), the term "Labor Compliance Program" is being substituted for "awarding body" to remain consistent with other changes above and the words "or subcontractor" are added after the word "contractor" to conform to current law. New subpart (e) consists of the text currently found in subpart (c) of section 16435.5. The only proposed modification of that existing text is to eliminate the reference to Labor Code section 1777.7 on the last line (proposed subpart (e)(5) and current section 16435.5(c)(5)), as current law now gives the Chief of the Division of Apprenticeship Standards authority to enforce that section.

Section 16435.5 would be deleted, with the current provisions incorporated into section 16435 as indicated in the preceding paragraph.

Section 16436 sets forth forfeitures of unpaid wages and penalties that must be approved by the Labor Commissioner prior to formal assessment by the Labor Compliance Program. In subpart (a), the term “awarding body” is changed to “Labor Compliance Program” and unnecessary language is deleted without changing the substantive meaning. In subpart (b) the language is revised to refer directly to appeal rights under Labor Code section 1771.6. In subpart (b)(1), an additional reference is added to Labor Code section 1773.1, which sets forth a statutory definition of per diem wages.

Section 16437 sets forth the requirements and procedures for having the Labor Commissioner determine the amount of a forfeiture. Subpart (a) is amended by spelling out “Labor Compliance Program” and deleting “of the awarding body.” Subpart (a)(1) is rewritten to require the program to provide the dates of specific past events rather than a calculated future date. Subparts (a)(5) through (a)(7) are revised to make the language regarding mitigation of penalties consistent with recent statutory amendments to Labor Code section 1775. “Subcontractor” is added wherever “contractor” appears to make the language consistent with current law. Subpart (b) is revised to clarify deadlines for submitting a proposed forfeiture and delete an obsolete reference to filing suit. Subpart (c) is revised by deleting a requirement to serve a Notice of Deadlines, which is now obsolete and unnecessary under current law. Subpart (e) is revised to clarify additional service requirements for notices where the Labor Compliance Program is distinct from the Awarding Body and where there is a contractor, and also to delete alternative deadlines for Labor Commissioner action.

Section 16438 governs the handling of contract funds forfeited due to prevailing wage violations. Subpart (a) is revised to clarify that in cases of limited involvement by the Labor Commissioner, funds must be deposited with the Awarding Body. The last sentence pertaining to allocation between the Awarding Body and a third party agent is deleted as unnecessary. Subpart (b) is revised to refer to administrative proceedings as well as court proceedings and to give the Hearing Officer (see Labor Code section 1742(b)) authority to allocate fines, penalties, or forfeitures between the Labor Commissioner and the Awarding Body when both are parties to the administrative hearing. The language of subparts (c) and (d) is revised to make it consistent with current law and these proposals without changing the substantive effect.

Section 16439 governs appeals from a determination made by a Labor Compliance Program that a contractor or subcontractor has violated prevailing wage requirements. The Director proposes to delete all of the existing language in the current regulation. Subpart (a) is completely rewritten to make express reference to and to bring the language into conformity with the current laws governing review found at Labor Code sections 1742 and 1771.6 and the hearing regulations at 8 California Code of Regulations sections 17201–17270. Subpart (b) is completely rewritten to specify that the Labor Commissioner has a right to intervene in any review proceeding from a Labor Compliance Program action. There would be no additional subparts as the subject matter of this regulation is now covered comprehensively in the prevailing wage hearing regulations at 8 California Code of Regulations sections 17201–17270.

COMPARABLE STATUTES AND REGULATIONS

Federal law requires the payment of prevailing wages and adherence to other minimum employment standards for work performed on federal public works projects through the Davis-Bacon Act, 40 U.S.C. sections 276a–276a-7, the Contract Work Hours and Safety Standards Act, 40 U.S.C. sections 327–334, and related statutes that incorporate these requirements into specific federal programs. (See 29 C.F.R. section 5.1 for a list of nearly 60 other such laws.) The regulations which implement these federal statutes are found at 29 C.F.R. Parts 1 through 8. Davis-Bacon and the provisions of Articles 1 and 2 of Division 2, Part 7, Chapter 1 (commencing with section 1720) of the Labor Code impose similar requirements in a similar manner. However, they are distinct in that Davis-Bacon applies only to contracts in which the federal government or the District of Columbia is a party, while the state statutes exclude from coverage projects that are funded, carried out, and controlled by the federal government, even when a state or local agency cosponsors the project. 8 Cal.Code Reg. section 16001(b); and *Southern California Labor Management Operating Engineers Contract Compliance Committee v. Aubry*, 54 Cal.App.4th 873 (1997). The statutes also have different methods for determining prevailing wage rates, which sometimes result in a higher state rate. The scope of coverage of Davis-Bacon is also narrower than state law.

The regulations governing Davis-Bacon and related federal statutes provide for certain enforcement responsibilities to be performed by agencies administering federal contracts. The federal contracting agencies in turn may pass these responsibilities on to a state or local agency with which it contracts. See, for example, Federal Highway Administration [FHWA]

Contract Administration Core Curriculum Manual Sections II.A.4 and II.A.5.¹ Monitoring and enforcement requirements are similar in many respects but also different in terms of scope of coverage, wage rates, and specific reporting requirements.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Director has made the following initial determinations with respect to these proposals. The Director notes that these proposals bring preexisting regulations governing Labor Compliance Programs into conformity with statutory changes, including the adoption of Labor Code sections 1741–1743 and 1771.6–1771.8. As such these proposals impose no significant mandates, costs, or savings that are different or distinct from what the Legislature has required by statute. The Director invites further comment on these specific impacts.

MANDATES ON LOCAL AGENCIES OR SCHOOL DISTRICTS

The proposals do not impose mandates on local agencies or school districts distinct from those imposed by statute. The adoption of Labor Code sections 1771.7 and 1771.8 made it mandatory for local agencies and school districts to maintain and operate a Labor Compliance Program in order to obtain certain school and water project construction funds. Consistent with existing law, these programs must be certified by the Director of Industrial Relations, and over two hundred local agencies and school districts have sought and obtained such certification since these statutes became effective.

Costs or Savings to State Agencies; Reimbursable Costs Imposed on Local Agencies or School Districts; other nondiscretionary costs or savings imposed on local agencies; and costs or savings in federal funding to the state:

The *statutes* impose increased costs on the branch of the Division of Labor Standards Enforcement that oversees Labor Compliance Programs for purposes of (1) reviewing applications to become certified by the Director of Industrial Relations, (2) reviewing and approving forfeiture determinations proposed by Labor Compliance Programs, and (3) providing training and technical support and intervening in enforcement actions where appropriate. The Division has absorbed these costs thus far with existing staff by deferring other responsibilities, including its own direct enforcement responsibilities. Additional funding is being sought for the increased ongoing responsibilities caused by the bond measures.

The *statutes* also impose increased costs on the Office of the Director of the Department of Industrial

Relations for certifying new and ongoing Labor Compliance Programs and on the Director's Legal Unit, which supplies hearing officers to hear and deciding contractor appeals from prevailing wage determinations. The Director also has absorbed these costs thus far with existing staff but is seeking additional funding, particularly for hearing officers and support staff, so that the anticipated rise in prevailing wage determinations and appeals from projects funded by these bonds will not result in an inability to hear and decide cases within the short statutorily prescribed deadlines.

Local agencies and school districts that choose to maintain and operate Labor Compliance Programs in order to obtain school and water bond project funding will incur costs to operate those programs. However, those costs should be part of the overall project expenses for which the bond funding is provided. By undertaking their own enforcement, awarding bodies will also be able to retain penalty assessments, resulting in increased revenues to local agencies and school districts.

The proposals do not involve any costs or savings in federal funding to the state.

Initial Determination of Economic Impact on Business:

The Director has made an initial determination that these proposals will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. The prevailing wage statutes impact only businesses that choose to enter into public works contracts, and they are neutral in their treatment of California businesses as compared to businesses from other states.

Known Cost Impacts on Representative Private Person or Business:

These proposals are directed primarily toward local agencies and school districts that maintain and operate Labor Compliance Programs. The Director is not aware of any cost impact that a representative private person or business would necessarily incur in reasonable compliance with these proposals.

Creation, Elimination, or Expansion of Jobs or Businesses (Results of Assessment under Government Code section 11346.3(b)):

The Director has made initial determinations that (1) these proposals will not affect the creation or elimination of jobs within the State of California; (2) these proposals will not affect the creation of new businesses or the elimination of existing businesses within the State of California; and (3) these proposals will not affect the expansion of businesses currently doing business within the State of California.

¹ <http://wwwcf.fhwa.dot.gov/programadmin/contracts/cor>

Reporting Requirements (Finding under Government Code section 11346.3(c)):

These proposals impose no reporting requirements on businesses.

Effect on Housing Costs:

These proposals have no effect on housing costs.

Effect on Small Business:

The Director has made an initial determination that these proposals will not affect small business. The reason for this determination is that the proposals consist of a series of amendments designed to bring existing regulations into conformity with recent statutory changes, and the proposals will have no effect on small business distinct from the statutes and existing regulations. The proposals and the regulations they would amend are directed toward public agencies that elect to enforce public works prevailing wage requirements. None of the proposals are regulations that small businesses legally would be required to comply with or that small businesses legally would be required to enforce. Small business will derive no new or distinct benefit nor will they incur any new or distinct detriment from the enforcement of these proposals.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5(a)(13), the Director must determine that no reasonable alternative considered by the Director or that otherwise has been identified and brought to the Director's attention would either be more effective in carrying out the purpose for which the action is proposed or be as effective as the proposed action and less burdensome to affected private persons. These proposals consist of a series of amendments to existing regulations governing Labor Compliance Programs, and the amendment of these existing regulations appears to be the most feasible approach for bringing them into conformity with recent statutory changes. The Director invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

**AVAILABILITY OF INFORMATION
PERTAINING TO THE PROPOSED ACTION**

The Director will have the rulemaking file available for inspection and copying throughout the rulemaking process. Initially the file will consist of this notice, the initial statement of reasons, and the text of the proposed regulations. The text of the file will be available at:

Department of Industrial Relations
Office of the Director—Legal Unit
455 Golden Gate Avenue, Suite 9516
San Francisco, CA 94102

or from the contact persons John Cumming or John Rea.

WEBSITE

Rulemaking records, including the text of the proposed regulations may be accessed through the Department's Internet website at www.dir.ca.gov.

**AVAILABILITY OF CHANGED OR
MODIFIED TEXT**

After holding the hearings and considering all timely and relevant comments received, the Director may adopt the proposed regulations substantially as described in this notice. If the Director makes modifications which are sufficiently related to the originally proposed text, the modified text (with changes clearly indicated) will be made available to the public for at least 15 days before the Director adopts the regulations as revised. Any such modifications will also be posted on the Department's website. Please send requests for copies of any modified regulations to the attention of the contact persons listed above. The Director will accept written comments on the modified regulations for 15 days after the date on which they are made available.

**AVAILABILITY OF THE FINAL STATEMENT
OF REASONS AND THE RULEMAKING FILE**

Upon completion, the Final Statement of Reasons will be available and the entire rulemaking file may be obtained from contact persons named in this notice.

**TITLE 8. DIVISION OF
WORKERS' COMPENSATION**

DEPARTMENT OF INDUSTRIAL RELATIONS

NOTICE OF PROPOSED RULEMAKING

**Subject Matter of Proposed Amendments
to Regulations:
Workers' Compensation—Health
Care Organizations**

PROPOSED REGULATORY ACTIONS

NOTICE IS HEREBY GIVEN that the Administrative Director of the Division of Workers' Compensation (hereinafter "Administrative Director"), acting pursuant to the authority granted by Labor Code Sections 133, 4600.3, 4600.5, 4600.7, 4603.5 and 5307.3. proposes to amend existing regulations concerning the timing and amount of payments made by Health Care Organizations (HCOs) to the Administrative Director and adopt a new requirement for a monthly report of HCO enrollment.

The proposed amendments are to Section 9779.5. This Section concerns the payment of administrative fees by HCOs to the Administrative Director.

The proposed amendments will require payment of an existing administrative fee in one single payment instead of allowing an HCO the option of submitting two installments.

The proposed amendments will also reduce a 2004 loan repayment surcharge from one-third of the outstanding loan balance to one-fourth of the outstanding loan balance.

The proposed amendments will also require each HCO to submit a monthly report to the Administrative Director, by the fifteenth day of each month, of its total enrollment as of the first day of that month.

Finally, Labor Code 4600.7 is being added to the reference note.

TIME AND PLACE OF PUBLIC HEARING

A public hearing has been scheduled to permit all interested persons the opportunity to present statements or arguments, either orally or in writing, with respect to the subjects noted above. The hearing will be held at the following time and place:

Date: Tuesday, October 21, 2003

Time: 10:00 a.m.

Place: Auditorium

**The Governor Hiram Johnson
State Office Building
455 Golden Gate Avenue
San Francisco, California 94102**

The State Office Building and its Auditorium are accessible to persons with mobility impairments. Alternate formats, assistive listening systems, sign language interpreters, or any other type of reasonable accommodation to facilitate effective communication for persons with disabilities, are available upon request. Please contact the State Disability Accommodation Coordinator, Adel Serafino, at 1-866-681-1459 (toll free), or through the California Relay Service by dialing 711 or 1-800-735-2929 (TTY/English) or 1-800-855-3000 (TTY/Spanish) as soon as possible to request assistance.

Please note that public comment will begin promptly at 10:00 a.m. and will conclude when the last speaker has finished his or her presentation or 5:00 p.m., whichever is earlier. If public comment concludes before the noon recess, no afternoon session will be held.

The Administrative Director requests, but does not require, that any persons who make oral comments at the hearing also provide a written copy of their comments. Equal weight will be accorded to oral comments and written materials.

AUTHORITY AND REFERENCE

The Administrative Director is undertaking this regulatory action pursuant to the authority vested in

the Administrative Director by Labor Code Sections 133, 4600.5, 4600.7, 4603.5 and 5307.3.

Reference is to Labor Code Sections 4600, 4600.5 and 4600.7.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Labor Code Section 4600.7 creates the Workers' Compensation Managed Care Fund in the State Treasury and authorizes the Administrative Director to establish a schedule of fees and revenues to be charged to certified Health Care Organizations (HCOs) and applicants for certification to fund the administration of the HCO program.

Proposed Amendments to Section 9779.5—Reimbursement of Costs to the Administrative Director; Obligation to Pay Share of Administrative Expense:

The HCO program in the Division of Workers' Compensation (DWC) was initially funded in 1994 with a \$1.7 million General Fund loan. Labor Code Section 4600.7 established the Workers' Compensation Managed Care Trust Fund in the State Treasury and required the Administrative Director to establish a schedule of fees and revenues to be charged to HCOs and applicants for certification in order to fully fund the administration of the managed care program and to repay a loan from the General Fund to the Workers' Compensation Managed Care Trust Fund.

Subdivision (a) of the existing regulation promulgated by the Administrative Director requires all organizations certified as HCOs or WCHCPOs to pay an annual assessment to the Workers' Compensation Managed Care Fund representing that entity's share of the costs and expenses reasonably incurred in the administration of the HCO program. The annual assessment may be paid in two equal installments, with the first payment falling due on or before July 1 and the second installment falling due on or before December 15.

The first proposed amendment would require the annual assessment to be paid in a single payment due on or before July 1.

Subdivision (b)(2) of the existing regulation will require each HCO to pay an annual surcharge to reimburse the general fund for the loan made to start up the Workers' Compensation Managed Care Fund. The current outstanding loan balance is approximately \$2.7 million. The existing regulation provides that the annual surcharge for each HCO will be allocated to each HCO as follows:

2004: (One-third of outstanding loan balance) divided by (total number of enrollees in all certified HCOs) times (number of enrollees in HCO)

2005: (One-half of outstanding loan balance) divided by (total number of enrollees in all certified HCOs) times (number of enrollees in HCO)

2006: (Total outstanding loan balance) divided by (total number of enrollees in all certified HCOs) times (number of enrollees in HCO)

The second proposed amendment would reduce the total 2004 surcharge from one-third of the outstanding loan balance to one-fourth of the outstanding loan balance.

The final proposed amendment would require each HCO to submit a monthly report to the Administrative Director, by the fifteenth day of each month, of its total enrollment as of the first day of that month.

In addition, Labor Code Section 4600.7 is being added to the reference note.

DISCLOSURES REGARDING THE PROPOSED REGULATORY ACTION

The Administrative Director has made the following initial determinations:

- Significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states: None. The only economic impacts of the proposed amendments would be to change the timing of existing payments by consolidating two existing payments into one; reduce the amount of the 2004 loan repayment surcharge; and, require each HCO to report its monthly enrollment. None of these changes would be economically significant.
- Adoption of these regulations will not: (1) create or eliminate jobs within the State of California, (2) create new businesses or eliminate existing businesses within the State of California, or (3) affect the expansion of businesses currently doing business in California.
- Effect on Housing Costs: None.
- Cost impacts on representative private person or business: The Administrative Director is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. The first proposed amendment would merely change the timing of existing payments by consolidating two payments into one. The second proposed change would reduce the amount of the 2004 loan repayment surcharge paid by each HCO. The third proposed amendment would not impose any new record-keeping requirements on HCOs to collect data they do not already maintain, it would merely require each HCO to report that data to the Administrative Director on a monthly basis.

FISCAL IMPACTS

- Costs or savings to state agencies or costs/savings in federal funding to the State: None.
- Local Mandate: None. The proposed regulations will not impose any new mandated programs or increased service levels on any local agency or school district. The proposed amendments to not apply to any local agency or school district.
- Cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code: None. The proposed amendments do not apply to any local agency or school district.
- Other nondiscretionary costs/savings imposed upon local agencies: None. The proposed amendments to not apply to any local agency or school district.

EFFECT ON SMALL BUSINESS

The Administrative Director has determined that the proposed regulations may affect small businesses.

FINDING CONCERNING THE CREATION OF A REPORTING REQUIREMENT

Pursuant to Government Code Section 11346.3(c), the Administrative Director has made a finding that requiring each HCO to submit a monthly report of its enrollment is necessary for the health, safety, or welfare of the people of the state, and that it is necessary that this regulation apply to businesses.

The Administrative Director based this determination on the fact that tracking monthly enrollment in HCOs will allow the Administrative Director to more accurately project loan repayment surcharge requirements, allocate staff and resources for program oversight in response to non-linear growth in enrollment and it will assist the Administrative Director in responding to oversight inquiries concerning the HCO program.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code Section 11346.5(a)(13), the Administrative Director must determine that no reasonable alternative considered or that has otherwise been identified and brought to the Administrative Director's attention would be more effective in carrying out the purpose for which the actions are proposed or would be as effective and less burdensome to affected private persons than the proposed actions.

The Administrative Director invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

PUBLIC DISCUSSIONS OF
PROPOSED REGULATIONS

A pre-notice workshop, pursuant to Government Code Section 11346.45, is not required to implement the proposed regulations, because the issues addressed are not so complex that it cannot easily be reviewed during the comment period.

In addition, the text of the draft proposed regulations was made available for pre-regulatory public comment through the Division's Internet message board (the DWC Forums).

AVAILABILITY OF INITIAL STATEMENT
OF REASONS AND TEXT OF PROPOSED
REGULATIONS / INTERNET ACCESS

An Initial Statement of Reasons and the text of the proposed regulations have been prepared and are available from the contact person named in this notice. The entire rulemaking file will be made available for inspection and copying at the address indicated below or a copy will be provided upon written request.

As of the date of this notice, the rulemaking file consists of the notice, the Initial Statement of Reasons, the proposed text of the regulations in ~~strikeout/underline~~ format, and the Form 399. In addition, the Notice, Initial Statement of Reasons, and proposed text of regulations may be accessed and downloaded from the Department of Industrial Relations' Internet site at www.dir.ca.gov

PRESENTATION OF ORAL AND/OR WRITTEN
COMMENTS AND DEADLINE FOR
SUBMISSION OF WRITTEN COMMENTS

Members of the public are invited to present oral and/or written statements, arguments or evidence at the public hearing. If you provide a written comment, it will not be necessary to present your comment as oral testimony at the public hearing.

Any person may submit written comments on the proposed regulations, prior to the public hearings to:

Ms. Marcela Reyes,
Regulations Coordinator
Division of Workers' Compensation
Post Office Box 420603
San Francisco, CA 94142

Written comments may be submitted by facsimile transmission (FAX), addressed to the contact person at (415) 703-4720. Written comments may also be sent electronically (via e-mail), using the following e-mail address: dwcrules@hq.dir.ca.gov

Unless submitted prior to or at the public hearing, all written comments must be received by the agency contact person, no later than 5:00 p.m. on October 21, 2003. Equal weight will be accorded to oral and written materials.

COMMENTS TRANSMITTED BY E-MAIL
OR FACSIMILE

The Administrative Director will accept written comments transmitted by e-mail provided they are sent to the following e-mail address: dwcrules@hq.dir.ca.gov

The Administrative Director will also accept written comments transmitted by facsimile provided they are directed to the attention of Marcela Reyes and sent to the following facsimile number: (415) 703-4720.

Due to the inherent risks of non-delivery by facsimile transmission, the Administrative Director suggests, but does not require, that a copy of any comments transmitted by facsimile transmission also be submitted by regular mail.

Comments sent to other e-mail addresses or other facsimile numbers will not be accepted. Comments sent by e-mail or facsimile are subject to the deadline set forth above for written comments.

AVAILABILITY OF RULEMAKING FILE AND
LOCATION WHERE RULEMAKING FILE
MAY BE INSPECTED

Any interested person may inspect a copy or direct questions about the proposed regulations, the Initial Statement of Reasons, and any supplemental information contained in the rulemaking file.

The rulemaking file, including the Initial Statement of Reasons, the complete text of the proposed regulations and any documents relied upon in this rulemaking may be inspected during normal business hours (8:00 a.m. to 5:00 p.m., Monday through Friday, excluding public holidays) at the following location:

Division of Workers' Compensation
455 Golden Gate Avenue, Ninth Floor
San Francisco, California 94102

AVAILABILITY OF RULEMAKING
DOCUMENTS ON THE INTERNET

Documents concerning this proceeding are available on the Division's website: www.dir.ca.gov. To access them, click on the "Proposed Regulations—Rulemaking" link and scroll down the list of rulemaking proceedings to find the current Health Care Organizations rulemaking link.

CONTACT PERSON

Nonsubstantive inquiries concerning this action, such as requests to be added to the mailing list for rulemaking notices, requests for copies of the text of the proposed regulations, the Initial Statement of Reasons, and any supplemental information contained in the rulemaking file may be directed to the contact person. The contact person is:

Ms. Marcela Reyes
Regulations Coordinator
Department of Industrial Relations

Division of Workers' Compensation
Post Office Box 420603
San Francisco, CA 94142

The telephone number of the contact person is (415) 703-4600.

BACK-UP CONTACT PERSON / CONTACT PERSON FOR SUBSTANTIVE QUESTIONS

To obtain responses to questions regarding the substance of the proposed regulations, or in the event the contact person is unavailable, inquiries should be directed to: James M. Robbins, Industrial Relations Counsel, at the same address and telephone number as noted above for the contact person.

AVAILABILITY OF CHANGES FOLLOWING PUBLIC HEARING

If the Administrative Director makes changes to the proposed regulations as a result of the public hearing and public comment received, the modified text with changes clearly indicated will be made available for public comment for at least 15 days prior to the date on which the regulations are adopted. The modified text will be made available on the Division's website: www.dir.ca.gov and may be located by following the direction provided above.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, the Final Statement of Reasons will be available and copies may be requested from the contact person named in this notice or may be accessed on the Division's website: www.dir.ca.gov by following the directions provided above.

AUTOMATIC MAILING

A copy of this Notice, including the Informative Digest, will automatically be sent to those interested persons on the Administrative Director's mailing list and the DWC Managed Care Program's mailing list.

If adopted, the proposed regulation as amended will appear in Title 8, California Code of Regulations, Section 9779.5.

TITLE 13. AIR RESOURCES BOARD

NOTICE OF PUBLIC HEARING TO CONSIDER ADOPTION OF THE HEAVY-DUTY DIESEL ENGINE SOFTWARE UPGRADE REGULATION (CHIP REFLASH)

The Air Resources Board (the Board or ARB) will conduct a public hearing at the time and place noted below to consider adopting the proposed heavy-duty diesel engine software upgrade regulation. This proposed software upgrade regulation mandates instal-

lation of software to reduce emissions of oxides of nitrogen (NOx) from 1993-1999 model year heavy-duty vehicles.

The software upgrades, referred to as low NOx software, were developed in the 1990s as a result of negotiations between the United States Environmental Protection Agency (U.S. EPA), the ARB, and seven engine manufacturers. Owners of eligible vehicles and dealers/distributors with the capability to install the software have responsibilities under the proposed regulation. This notice summarizes the proposed regulation requirements.

DATE: October 23, 2003

TIME: 9:00 a.m.

PLACE: California Environmental Protection Agency
Air Resources Board
1001 I Street
Auditorium, Second Floor
Sacramento, CA 95814

This item will be considered at a two-day meeting of the Board, which will commence at 9:00 a.m., October 23, 2003, and may continue at 8:30 a.m., October 24, 2003. This item may not be considered until October 24, 2003. Please consult the agenda for the meeting, which will be available at least 10 days before October 23, 2003, to determine the day on which this item will be considered.

If you have special accommodation or language needs, please contact the ARB's Clerk of the Board at (916) 322-5594 or sdorais@arb.ca.gov as soon as possible. TTY/TDD/Speech-to-Speech users may dial 7-1-1 for the California Relay Service.

INFORMATIVE DIGEST OF PROPOSED ACTION AND POLICY STATEMENT OVERVIEW

Sections Affected: Proposed adoption of section 2011 of article 3, chapter 1, division 3, title 13, California Code of Regulations (CCR). Proposed amendments to sections 2180.1, 2181, 2184, 2185, 2186, 2192, and 2194 of article 1, chapter 3.5, division 3, title 13, CCR.

BACKGROUND

In the 1990s, engine manufacturers used computer-based strategies on engines in trucks, school buses, urban buses, and motor homes that allowed the engines to comply with emission limits under certification conditions but caused significantly higher NOx emissions during highway driving. The U.S. EPA and ARB consider these strategies to be defeat devices (a.k.a. dual mapping and transient sensing algorithms) that result in off-cycle NOx emissions.

In 1998, the following manufacturers signed Consent Decrees with the U.S. EPA (represented by the Department of Justice (DOJ)), and the ARB: Caterpil-

lar, Cummins, Detroit Diesel, Navistar, Mack/Renault, and Volvo. The Consent Decrees stipulate penalties, additional certification requirements, an October 2002 deadline for meeting 2004 model year standards, in-use testing, offset and incentive programs, and the Low NOx Rebuild Program. The state of California has similar agreements, called "Settlement Agreements."

The Low NOx Rebuild Program contained in the Consent Decrees and Settlement Agreements is simply engine software upgrades. The software is applicable to specified 1993–1998 model year electronically-controlled engines and is designed to reduce some of the high NOx emissions. The Consent Decrees and Settlement Agreements require low NOx rebuild kits to be installed at the time of normal engine rebuild. Information available during the time of the Consent Decree and Settlement Agreement negotiations indicated that rebuilds would be occurring around 300,000 to 400,000 miles of service. Increased durability of the diesel engine has enabled many engines to run 750,000 to 1,000,000 miles before needing a rebuild.

The engine manufacturers have complied with a portion of the Low NOx Rebuild Program by providing the low NOx rebuild kits (i.e. engine software) to dealers and distributors. However, only four to ten percent of the heavy-duty diesel vehicles with eligible engines have low NOx rebuild kits installed.

Factors contributing to the small percentage of low NOx software installations may be varied. As diesel engines have become increasingly durable, fewer rebuilds are being performed or are performed at higher mileage intervals. Some engines subject to the Consent Decree/Settlement Agreement Low NOx rebuild requirements are used in school buses and motor homes, which travel significantly fewer annual miles than do long-haul trucks. Additionally, the poor economy during the past few years may have contributed to vehicle owners delaying their engine rebuilds. Finally, it is possible that some engines are not having software installed at rebuild as required under the Consent Decrees and Settlement Agreements.

Therefore, excess NOx emissions continue to be emitted. In order to reduce NOx emissions, staff has developed a regulatory proposal to require engine software upgrade on all applicable 1993–1998 model year engines used in 1993–1999 model year vehicles.

What is ARB proposing?

The ARB staff is proposing to reduce air pollution by requiring owners and operators of trucks, school buses, and motor homes with 1993–1998 model year heavy-duty diesel engines to upgrade the software in the electronic control module (ECM) of these engines.

Software upgrades were developed by the engine manufacturers and are available now for most 1993–1998 model year engines.

If adopted, owners and operators of eligible vehicles that operate in California must ensure that their vehicles' engines have the appropriate low NOx software installed. Since many 1999 model year vehicles have engines produced in 1998, owners and operators of 1999 model year vehicles will need to check to determine if they are affected. Distributors and dealers must provide the appropriate low NOx software to the vehicle owner or operator upon request.

What is a heavy-duty diesel engine software upgrade?

A heavy-duty diesel software upgrade (also referred to as low NOx software upgrade or chip reflash) is simply software installed in the engine that reprograms the vehicle's computer and reduces off-cycle NOx emissions. The installation process takes between one-half to one hour.

The ARB staff has prepared a list that can be checked to determine if low NOx software is available for the engine. This list is available from our web site at:

<http://www.arb.ca.gov/msprog/hdsoftware/hdsoftware.htm>

Would out-of-state vehicles be subject to the proposed requirements?

Yes. If adopted, owners and operators of 1993–1999 model year heavy-duty diesel vehicles (trucks, school buses, and motor homes) registered out-of-state, but that travel within California, would also be required to ensure that the engines in their vehicles have the appropriate low NOx software installed.

How much would the low NOx software installation cost?

The low NOx software should be provided and installed free of charge to vehicle owners and operators. Engine manufacturers have a responsibility to mitigate the excess NOx emissions caused by the "computer-based strategies" they programmed into their engines. The ARB staff believes the applicable Consent Decrees and Settlement Agreements require manufacturers to supply the Low NOx software at no added cost whenever it is requested.

Some engine manufacturers are already providing the software free of charge to all who request it. Unfortunately, some engine manufacturers are not installing the low NOx software free of charge unless it is installed in conjunction with an engine rebuild. If those engine manufacturers continue refusing to reimburse the dealers/distributors, dealers and distributors will likely pass charges on to the vehicle

owner/operator for about one-half to one hour of labor. The ARB is pressing the engine manufacturers to meet their financial obligations so that no costs are incurred by vehicle operators and owners.

When would low NOx software have to be installed?

If adopted by the Board as proposed by the staff, this regulation would require the low NOx software upgrade to be installed between April and December 2004, depending on the model year of the engine in the affected vehicle. Our proposal is as follows:

1993–1994 model years By April 30, 2004
1995–1996 model years By August 31, 2004
1997–1998 model years By December 31, 2004

How would the low NOx software installations be enforced?

The ARB enforcement staff would verify the installations of the low NOx software through the existing Heavy-Duty Vehicle Inspection Program (HDVIP). In the HDVIP, the ARB staff already inspects heavy-duty vehicles at California Highway Patrol (CHP) weigh stations, randomly selected roadside locations, and fleet facilities for excessive smoke and tampering.

Staff is proposing to amend the HDVIP to include the verification of the low NOx software installations. Inspectors, using an electronic device appropriate for the engine, would be able to verify that the correct low NOx software has been installed. Failure to have the low NOx software installed by the compliance dates would result in a citation accompanied by monetary penalties.

What would the proposed penalty be for not having the low NOx software installed?

The penalty would be \$300 if the low NOx software were installed within 45 days of issuance of a citation. If the software were not installed until after 45 days of issuance of a citation, there would be an additional \$500 penalty. The penalties for the failure to install the low NOx software would apply to both California-registered vehicles and out-of-state registered vehicles, and would be in addition to any penalties incurred in the HDVIP for excessive smoke and tampering.

The \$300 penalty would be waived for California-registered school buses if the low NOx software were installed within 45 days of issuance of a citation. If the software were not installed until after 45 days of issuance of a citation, both the \$300 penalty and the additional \$500 penalty would apply.

**AVAILABILITY OF DOCUMENTS AND
AGENCY CONTACT PERSONS**

The Board staff has prepared a staff report: Initial Statement of Reasons (ISOR) for the Proposed Regulation, which includes a summary of the environmental and economic impacts of the proposal and supporting documentation. The staff report is entitled: “Initial Statement of Reasons, Public Hearing to Consider Adoption Of The Heavy-Duty Diesel Engine Software Upgrade Regulation (Chip Reflash).”

Copies of the staff report and the full text of the proposed regulatory language, in underline and strike-out format to allow for comparison with the existing regulations, may be accessed on the ARB’s web site listed below, or may be obtained from the Public Information Office, Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, 1st Floor, Sacramento, CA 95814, (916) 322-2990 at least 45 days prior to the scheduled hearing October 23, 2003.

Upon its completion, the Final Statement of Reasons (FSOR) will be available and copies may be requested from the agency contact persons in this notice, or may be accessed on the ARB’s web site listed below.

Inquiries concerning the substance of the proposed regulation may be directed to the designated agency contact persons, Lisa Jennings, Air Pollution Specialist, at (916) 322-6913, or Earl Landberg, Air Pollution Specialist, at (916) 323-1384.

Further, the agency representative and designated back-up contact persons to whom nonsubstantive inquiries concerning the proposed administrative action may be directed are Artavia Edwards, Manager, Board Administration & Regulatory Coordination Unit, (916) 322-6070, or Amy Whiting, Regulations Coordinator, (916) 322-6533. The Board has compiled a record for this rulemaking action, which includes all the information upon which the proposal is based. This material is available for inspection upon request to the contact persons.

If you are a person with a disability and desire to obtain this document in an alternative format, please contact the Air Resources Board ADA Coordinator at (916) 323-4916, or TDD (916) 324-9531, or (800) 700-8326 for TDD calls outside the Sacramento area.

This notice, the ISOR and all subsequent regulatory documents, including the FSOR, when completed, are available on the ARB Internet site for this rulemaking at www.arb.ca.gov/regact/chip03/chip03.htm

**COSTS TO PUBLIC AGENCIES AND TO
BUSINESSES AND PERSONS AFFECTED**

The determinations of the Board’s Executive Officer concerning the costs or savings necessarily incurred by public agencies and private persons and

businesses in reasonable compliance with the proposed regulations are presented below.

Pursuant to Government Code sections 11346.5(a)(5) and 11346.5(a)(6), the Executive Officer has determined that the proposed regulatory action will not create costs or savings to any state agency or in federal funding to the state, costs or mandate to any local agency or school district whether or not reimbursable by the state pursuant to Part 7 (commencing with section 17500), Division 4, Title 2 of the Government Code, or other nondiscretionary savings to state or local agencies.

In developing this regulatory proposal, the ARB staff evaluated the potential economic impacts on representative private persons or businesses. There may be as many as 40,000 businesses, up to 3,000 school districts, and over 5,000 individuals who own motor homes with 1993–1999 model year heavy-duty diesel vehicles affected by this proposal. Also affected are approximately 100 dealers/distributors for Caterpillar, Cummins, Detroit Diesel, Mack/Renault, International (Navistar), or Volvo that have the capability to install low NOx software into an eligible engine's ECM. Finally, this proposal will also affect the seven engine manufacturers mentioned already—each of which is located outside of California. The total statewide costs that businesses and individuals may incur to comply with this regulation over its lifetime are up to eight million dollars.

The ARB staff believes that the low NOx software should be provided and installed free of charge to vehicle owners and operators. If engine manufacturers reimburse the dealers and distributors for labor charges, the only cost to the vehicle owner would be the time that the vehicle is out-of-service. This includes time: 1) to drive the vehicle to the dealer or distributor facility; 2) to install the low NOx software; and 3) to return the vehicle back to service. Waiting time would be minimized if vehicle owners and operators make an appointment with the dealer or distributor. This "time cost" can be reduced to next to nothing if the low NOx software is installed at the same time that another service or repair is performed on the vehicle.

The Executive Officer has made an initial determination that the proposed regulatory action will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states, or on representative private persons.

In accordance with Government Code section 11346.3, the Executive Officer has determined that the proposed regulatory action will not affect the creation or elimination of jobs within the State of California, the creation of new businesses or elimination of existing businesses within the State of California, or

the expansion of businesses currently doing business within the State of California. A detailed assessment of the economic impacts of the proposed regulatory action can be found in the staff report (ISOR).

The Executive Officer has also determined, pursuant to Title 1, CCR, section 4, that the proposed regulatory action will affect small businesses. Staff was unable to determine the number or percentage of total businesses impacted that are small businesses. Staff believes that some of the 40,000 companies that own 1993–1999 model year heavy-duty diesel vehicles affected by this proposal are small businesses based on income, profit, number of employees, or number of vehicles owned. Some of the dealers/distributors affected may also be small businesses. Staff has estimated the initial cost for a small business at 0-200 dollars with the typical businesses spending 0-1500 dollars to comply with this regulatory proposal.

In accordance with Government Code sections 11346.3(c) and 11346.5(a)(11), the ARB's Executive Officer has found that the reporting requirements of the regulation which apply to businesses are necessary for the health, safety, and welfare of the people of the State of California.

Before taking final action on the proposed regulatory action, the Board must determine that no reasonable alternative considered by the agency or that has otherwise been identified and brought to the attention of the agency would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

SUBMITTAL OF COMMENTS

The public may present comments relating to this matter orally or in writing at the hearing, and in writing or by e-mail before the hearing. To be considered by the Board, written submissions not physically submitted at the hearing must be received **no later than 12:00 noon, October 22, 2003**, and addressed to the following:

Postal mail is to be sent to:

Clerk of the Board
Air Resources Board
1001 I Street, 23rd Floor
Sacramento, California 95814

Electronic mail is to be sent to: chip03@listserv.arb.ca.gov and received at the ARB **no later than 12:00 noon, October 22, 2003**.

Facsimile transmissions are to be transmitted to the Clerk of the Board at (916) 322-3928 and received at the ARB **no later than 12:00 noon October 22, 2003**.

The Board requests but does not require that 30 copies of any written statement be submitted and that all written statements be filed at least 10 days prior to the hearing so that ARB staff and Board Members have time to fully consider each comment. The ARB encourages members of the public to bring to the attention of staff in advance of the hearing any suggestions for modification of the proposed regulatory action.

STATUTORY AUTHORITY AND REFERENCES

This regulatory action is proposed under that authority granted in Health and Safety Code, sections 39600, 39601, 43013, 43018, 43701, and 44011.6 Health and Safety Code.

This action is proposed to implement, interpret and make specific sections 39001, 39002, 39003, 39010, 39033, 43000, 43013, 43018, 43701, and 44011.6 Health and Safety Code, and sections 305, 505, 545, and 2813 Vehicle Code.

HEARING PROCEDURES

The public hearing will be conducted in accordance with the California Administrative Procedure Act, Title 2, Division 3, Part 1, Chapter 3.5 (commencing with section 11340) of the Government Code.

Following the public hearing, the Board may adopt the regulatory language as originally proposed, or with non substantial or grammatical modifications. The Board may also adopt the proposed regulatory language with other modifications if the text as modified is sufficiently related to the originally proposed text that the public was adequately placed on notice that the regulatory language as modified could result from the proposed regulatory action; in such event the full regulatory text, with the modifications clearly indicated, will be made available to the public, for written comment, at least 15 days before it is adopted.

The public may request a copy of the modified regulatory text from the ARB's Public Information Office, Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, 1st Floor, Public Information Office, Sacramento, CA 95814, (916) 322-2990.

TITLE 13. DEPARTMENT OF MOTOR VEHICLES

NOTICE IS HEREBY GIVEN

The Department of Motor Vehicles (the department) proposes to adopt Section 425.01, regarding the Administrative Fee for Vehicle Code Book, in Article 6 (Administration), Chapter 1, Division 1, of Title 13, California Code of Regulations.

PUBLIC HEARING

A public hearing regarding this proposed regulatory action is not scheduled. However, a public hearing will be held if any interested person or his or her duly authorized representative requests a public hearing to be held relevant to the proposed action by submitting a written request to the contact person identified in this notice no later than 5:00 P.M., fifteen (15) days prior to the close of the written comment period.

DEADLINE FOR WRITTEN COMMENTS

Any interested person or his or her duly authorized representative may submit written comments relevant to the proposed regulations to the contact person identified in this notice. All written comments must be received at the department no later than 5:00 P.M. on October 20, 2003, the final day of the written comment period, in order for them to be considered by the department before it adopts the proposed regulations.

AUTHORITY AND REFERENCE

The department proposes to adopt the proposed action under the authority granted by Vehicle Code section 1651 in order to implement, interpret or make specific Vehicle Code section 1656(a).

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

AB 2996 of the 2002 legislative session amended Vehicle Code Section 1656. This amendment required that the department publish the California Vehicle Code once every two years and that all entities requesting a copy of the California Vehicle Code pay a charge sufficient to pay the entire cost of publishing and distributing the code. Prior to this amendment the department published the Vehicle Code annually and was permitted to charge \$3.00 for a copy of the Code.

The department is proposing an administrative fee of \$6.00 per copy of the Vehicle Code plus the actual cost of shipping the Code books to the requester.

FISCAL IMPACT STATEMENT

Cost Or Savings To Any State Agency: State agencies will be required to pay the administrative fee of \$6 per copy of the Vehicle Code book plus shipping costs, if applicable.

Other Non-Discretionary Cost or Savings to Local Agencies: Local and federal agencies will be required to pay the administrative fee of \$6 per copy of the Vehicle Code book plus shipping costs, if applicable.

Costs or Savings in Federal Funding to the State: None.

Cost Impact on Representative Private Persons or Businesses: There will be an increased cost to obtain a paper copy of the Vehicle Code book.

Effect on Housing Costs: None.

DETERMINATIONS

The department has made the following initial determinations concerning the proposed regulatory action:

- The proposed regulatory action has no effect that would have a significant statewide economic impact on businesses, including the ability of California businesses to compete with businesses in other states. Although there is an increased fee to receive a hard copy of the Vehicle Code book, the Code is available in its entirety on-line and is therefore accessible.
- The adoption of this regulation will neither create nor eliminate jobs or businesses in the state of California, will not result in the elimination of existing businesses, and will neither reduce nor expand businesses currently doing business in the state of California.
- The proposed regulatory action will not impose a mandate on local agencies or school districts, or a mandate which requires reimbursement pursuant to part 7 (commencing with Section 17500) of Division 4 of the Government Code.
- The proposed regulatory action will not affect small businesses since there is no mandate to purchase a Vehicle Code book.

ALTERNATIVES CONSIDERED

The department must determine that no reasonable alternative considered by the department or that has otherwise been identified and brought to the attention of the department would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons than the proposed action.

CONTACT PERSON

Inquiries relevant to the proposed action and questions on the substance of the proposed regulations should be directed to the department representative, Ann Myrick, Department of Motor Vehicles, P.O. Box 932382, Mail Station E-244, Sacramento, California 94232-3820; telephone number (916) 657-8857, or amyrick@dmv.ca.gov. In the absence of the department representative, inquiries may be directed to the Regulations Coordinator, Deborah Baity, at (916) 657-5690 or dbaity@dmv.ca.gov. The fax number for the Regulations Branch is (916) 657-1204.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The department has prepared an initial statement of reasons for the proposed action, and has available all the information upon which the proposal is based. The contact person identified in this notice shall make

available to the public upon request the express terms of the proposed action using underline or italics to indicate additions to, and strikeout to indicate deletions from, the California Code of Regulations. The contact person identified in this notice shall also make available to the public upon request the initial statement of reasons and final statement of reasons once it has been prepared and submitted to the Office of Administrative Law, and the location of public records, including reports, documentation and other materials related to the proposed action. In addition, the above-cited materials (Initial Statement of Reasons, and Express Terms) may be accessed at www.dmv.ca.gov, Other Services, Legal Affairs Division, Regulatory Actions web page.

AVAILABILITY OF MODIFIED TEXT

Following the written comment period, and the hearing if one is held, the department may adopt the proposed regulations substantially as described in this notice. If modifications are made which are sufficiently related to the originally proposed text, the full modified text with changes clearly indicated shall be made available to the public for at least 15 days prior to the date on which the department adopts the resulting regulations. Request for copies of any modified regulations should be addressed to the department contact person identified in this notice. The department will accept written comments on the modified regulations for 15 days after the date on which they are first made available to the public.

TITLE 13. DEPARTMENT OF MOTOR VEHICLES

NOTICE IS HEREBY GIVEN that the Department of Motor Vehicles, pursuant to the authority vested in it by section 87306 of the Government Code, proposes amendment to its Conflict of Interest Code located in Title 13, Section 1 of the California Code of Regulations. The purpose of these amendments is to implement the requirements of sections 87300 through 87302, and 87306 of the Government Code.

The Department of Motor Vehicles (the department) proposes to amend its Conflict of Interest Code to include employee positions that involve the making or participation in the making of decisions that may foreseeably have a material effect on any financial interest, as set forth in subdivision (a) of section 87302 of the Government Code. The proposed amendment affects the Appendix of Designated Employee Positions by: (1) adding new employee positions to the list of designated positions; (2) deleting employee positions from the list of designated positions; (3) changing the disclosure category for some existing

designated positions; and, (4) reflecting the reorganization and title changes of the department since the Conflict of Interest Code was last adopted.

This amendment reflects the organizational structure of the Department as of December 31, 2002. Copies of the amended code are available and may be requested from the Contact Person set forth below.

Any interested person may submit written statements, arguments, or comments relating to the proposed amendments by submitting them in writing no later than October 20, 2003, or at the conclusion of the public hearing, if requested, whichever comes later, to the Contact Person set forth below.

At this time, no public hearing has been scheduled concerning the proposed amendments. If any interested person or person's representative requests a public hearing, he or she must do so no later than October 6, 2003, by contacting the Contact Person set forth below.

The Department of Motor Vehicles has prepared a written explanation of the reasons for the proposed amendments (Initial Statement of Reasons) and has available the information on which the amendments are based. Copies of the proposed amendments, the Initial Statement of Reasons, and the information on which the amendments are based may be obtained by contacting the Contact Person set forth below.

The Department of Motor Vehicles has determined that the proposed amendments:

1. Impose no mandate on local agencies or school districts.
2. Impose no costs or savings on any state agency.
3. Impose no costs on any local agency or school district that are required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.
4. Will not result in any nondiscretionary costs or savings to local agencies.
5. Will not result in any costs or savings in federal funding to the state.
6. Will not have any potential cost impact on private persons, businesses or small business.

In making these proposed amendments, the Department of Motor Vehicles must determine that no alternative considered by the agency would be more effective in carrying out the purpose for which the amendments are proposed or would be as effective and less burdensome to affected persons than the proposed amendments.

CONTACT PERSON

All inquiries concerning this proposed amendment and any communication required by this notice should be directed to: Ann Myrick at the Department of Motor Vehicles, Regulations Branch, E244, PO Box 932382,

Sacramento, CA 94232-3820, or at (916) 657-8857, or amyrick@dmv.ca.gov. In the absence of the department representative, inquiries may be directed Regulations Coordinator, Debbie Baity at (916) 657-5690 or dbaity@dmv.ca.gov.

TITLE 16. BOARD OF CHIROPRACTIC EXAMINERS

NOTICE IS HEREBY GIVEN that the Board of Chiropractic Examiners (Board) is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments orally or in writing relevant to the action proposed at a hearing to be held at the State Capitol, Room 112, Sacramento, CA 95814 on October 23, 2003. Written comments must be received by the Board of Chiropractic Examiners at 2525 Natomas Park Drive, Suite 260, Sacramento, CA 95833-2931, or by fax at 916/263-5369, or by e-mail addressed to lmattthew@chiro.ca.gov no later than 5:00 p.m. on October 23, 2003, or must be received by the Board at the hearing. The Board of Chiropractic Examiners, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

AUTHORITY AND REFERENCE

Pursuant to the authority vested by Section 4(b) of the Chiropractic Initiative Act [Section 1000-4(b) of the Business and Professions Code] and to implement, interpret or make specific Section 5 of the Chiropractic Initiative Act [Section 1000-5 of the Business and Professions Code], the Board of Chiropractic Examiners is considering changes to Division 4 of Title 16 of the California Code of Regulations as follows:

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Adopt Section 361. Manipulation Under Anesthesia: Section 4(b) of the Chiropractic Initiative Act [Section 1000-4(b) of the Business and Professions Code] gives the Board the responsibility for implementing regulations they deem necessary for the performance of its work in order to maintain a high standard of professional services and the protection of the public.

Currently Section 302, Practice of Chiropractic allows chiropractors to manipulate and adjust the spinal column and other joints of the human body and there is no prohibition to the use of anesthesia in order to complete these manipulations. However, presently there is no regulation in effect that will ensure patient protection during treatment of manipulation under anesthesia (MUA). The adoption of Section 361 will enact a regulation which specifies the training required of licensees performing MUA procedures and define conditions under which the procedures may be performed.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None.

Nondiscretionary Costs/Savings to Local Agencies: None.

Local Mandate: None

Cost to Any Local Agency or School District for Which Government Code Section 17561 Requires Reimbursement: None

Business Impact: The Board has made an determination that the proposed regulatory action will not affect the creation or elimination of jobs within the State of California, the creation of new businesses or the elimination of existing business within the State of California, or the expansion of businesses currently doing business within the State of California.

Impact on Jobs/New Businesses: The Board of Chiropractic Examiners has made an initial determination that the proposed regulatory action will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

Cost Impacts on Representative Private Persons or Businesses: The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in complying with the proposed amendment.

Housing Costs: The Board has made an initial determination that the proposed regulatory action will not affect housing costs.

Small Business Impact: The proposed amendment may affect small businesses.

CONSIDERATION OF ALTERNATIVES

The Board of Chiropractic Examiners must determine that no reasonable alternative which it considered or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposal described in this Notice.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above-mentioned hearing.

INITIAL STATEMENT OF REASONS AND INFORMATION

The Board of Chiropractic Examiners has prepared an initial statement of the reasons for the proposed action and has available all the information upon which the proposal is based.

FEDERAL LAW

The proposed amendments do not duplicate or conflict with any federal law.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulation and of the initial statement of reasons and other information, if any, may be obtained at the hearing or prior to the hearing upon request from:

Board of Chiropractic Examiners
Lavella Matthews, Regulations Coordinator
2525 Natomas Park Drive, Suite 260
Sacramento, CA 95833-4306

The Board will have the entire rulemaking file available for inspection throughout the rulemaking process at the above address.

As of the date this notice is published in the Notice Register, the rulemaking file consists of this Notice, the proposed text of the regulation, and the initial statement of reasons.

CONTACT PERSON

Inquiries concerning the proposed administrative action and inquiries regarding the substance of the proposed regulation may be addressed to Lavella Matthews at the above address or at 916/263-6465. An alternative contact for information regarding the proposed amendment is Kim Smith at the above address or at 916/263-5355.

When prepared, copies of the final statement of reasons will be available from the contacts listed above.

INTERNET ACCESS OF DOCUMENTS

Copies of the documents referred to in this notice are available via Internet at www.chiro.ca.gov.

TITLE 16. CALIFORNIA ARCHITECTS BOARD

NOTICE OF PROPOSED CHANGES IN THE REGULATIONS

NOTICE IS HEREBY GIVEN that the California Architects Board (hereinafter "Board") is proposing to take the action described in the Informative Digest. Any person interested may present statements or

arguments orally or in writing relevant to the action proposed at a hearing to be held at the California Architects Board, 400 R Street, Suite 4000, Sacramento, California, at **10:00 a.m. on October 23, 2003**. Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the Board at its office not later than 5:00 p.m. on **October 23, 2003**, or must be received by the Board at the hearing. The Board, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

AUTHORITY AND REFERENCE

Pursuant to the authority vested by Section 5526 of the Business and Professions Code, and to implement, interpret or make specific Sections 5535.1, 5535.2, 5535.3, 5536, 5582 and 5582.1 of said Code, the Board is considering changes to Division 2 of Title 16 of the California Code of Regulations as follows:

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

1. Amend Section 134—Architectural Business Names

By existing law, only persons licensed by the Board (architects) are permitted to use the terms “architect,” “architecture,” or “architectural” in their business name and/or advertising devices. However, current regulatory language places additional title use restrictions on licensees that have not discouraged or curtailed false advertising or misrepresentation by unlicensed persons as was originally intended.

The proposed language clarifies current statutory provisions on the use of the protected terms and defines the position of the architect or architects in management control within a business entity. It also requires that any person or business entity offering and/or providing architects’ professional services must have an architect in responsible control of all such services. Definitions of terms are provided that clarify the regulations’ linkage to statutory provisions.

2. Repeal Section 135—Association

Existing regulation defines a procedure for unlicensed persons and licensees to collaborate for the purpose of “jointly offering” architectural services. Under the guise of being “associated” with a licensee,

there is a real opportunity for misrepresentation by unlicensed persons intent on representing themselves to consumers as architects or as qualified to provide architectural services. The current regulation does not provide the consumer protection from misrepresentation or unlicensed practice as was originally intended.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None

Nondiscretionary Costs/Savings to Local Agencies: None

Local Mandate: None

Cost to Any Local Agency or School District for Which Government Code Section 17561 Requires Reimbursement: None

Business Impact: The Board has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The greatest potential impact would be on some unlicensed persons (i.e., building designers and interior designers) and those businesses with non-conforming licensee roles. The building and interior designers were represented at each of the public informational hearings and separate informational presentations were made to the profession. The feedback from these groups support the Board’s belief that the number of businesses negatively affected by the proposed changes is very small in relation to the large number of businesses that are appropriately organized to offer and provide architectural services and that will not be impacted.

Impact on Jobs/New Businesses: The Board has determined that this regulatory proposal will not have a significant impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

Cost Impact on Representative Private Person or Business: The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Effect on Housing Costs: None

EFFECT ON SMALL BUSINESS

The Board has determined that the proposed regulations would affect some small businesses that offer and provide architectural services. Since the changes will affect small and large businesses in the same way, see Business Impact statement above.

CONSIDERATION OF ALTERNATIVES

The Board must determined that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention would either be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposal described in this Notice.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above-mentioned hearing.

INITIAL STATEMENT OF REASONS AND INFORMATION

The Board has prepared an initial statement of the reasons for the proposed action and has available all the information upon which the proposal is based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the California Architects Board at 400 R Street, Suite 4000, Sacramento, California 95814.

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the person named below.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below or by accessing the website listed below.

CONTACT PERSON

Any inquiries or comments concerning the proposed rulemaking action may be addressed to:

Name: Sonja Ruffin
Address: 400 R Street, Suite 4000
Sacramento, CA 95814
Telephone No.: (916) 327-3885
Fax No.: (916) 445-8524
E-Mail Address: sonja_ruffin@dca.ca.gov

The backup contact person is:

Name: Victoria Wilk
Address: 400 R Street, Suite 4000
Sacramento, CA 95814
Telephone No.: (916) 324-9915
Fax No.: (916) 445-8524
E-Mail Address: vicki_wilk@dca.ca.gov

Website Access: Materials regarding this proposal can be found at www.cab.ca.gov

Title 16. PHYSICAL THERAPY BOARD

NOTICE IS HEREBY GIVEN that the Physical Therapy Board of California is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments orally or in writing relevant to the action proposed at a hearing to be held at the Washington Inn Oakland, 495 Tenth Street, Oakland, California 94607, Friday, November 7, 2003. Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the Physical Therapy Board of California at its office not later than 5:00 p.m. on October 20, 2003 or must be received at the hearing. The Physical Therapy Board of California, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

AUTHORITY AND REFERENCE

Pursuant to the authority vested by Section 2615 of the Business and Professions Code, and to implement, interpret or make specific section 2660.2 the Physical Therapy Board of California is considering changes to Division 13.2 of Title 16 of the California Code of Regulations as follows:

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

1) Adopt section 1399.16

Business and Professions Code section 2660.2 authorizes the Board to issue a probationary license to any applicant for a license who is guilty of unprofessional conduct but who has met all other requirements for licensure.

Section 1398.4 of the California Code of Regulations delegates to the executive officer, or in his or her absence the president and vice-president, all functions necessary to the dispatch of business of the Board in connection with investigative and administrative proceedings under the jurisdiction of the board, except for those powers reserved exclusively to the "agency itself" under the Administrative Procedures Act. While the intent of the statute (section 2660.2 of the Business and Professions Code) was for the executive officer to continue to make the initial licensure decision, Section 2660.2 of the Business and Profes-

sions Code states the Board may in its sole discretion issue a probationary license to any applicant for licensure who is guilty of unprofessional conduct but who has met all other requirements for licensure.

The use of the phrase "the Board in its sole discretion" could raise an issue as to whether the Board members must approve all initial probationary licenses. Approval by the Board members of the initial probationary license would be in conflict if the probationary license were appealed and the Board members had to make a decision on an administrative law judge's Proposed Decision.

Further, section 2660.2 provides when an initial probationary license may be issued and specifies some possible restrictions, but does not place any limitation on restrictions or guidelines such as the length of probation. Applicants will be provided with additional knowledge of what restrictions may be placed on a license by including a reference to the Board's Disciplinary Guidelines (section 1399.15) in the proposed regulation.

The addition of Section 1399.16 will clarify the intent of section 2660.2 by delegating to the executive officer the authority to issue an initial probationary license and to require the use of the Board's Disciplinary Guidelines as a guideline for the issuance of an initial probationary license.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None

Nondiscretionary Costs/Savings to Local Agencies: None

Local Mandate: None

Cost to Any Local Agency or School District for Which Government Code Section 17561 Requires Reimbursement: None

Business Impact: The board has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

The following studies/relevant data were relied upon in making the above determination: None

Impact on Jobs/New Businesses: The board has determined that this regulatory proposal will not have a significant impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

Cost Impact on Private Persons or Entities: The Physical Therapy Board of California is not aware of any cost impacts that a representative private person or

business would necessarily incur in reasonable compliance with the proposed action.

Effect on Housing Costs: None

EFFECT ON SMALL BUSINESS

The Physical Therapy Board of California has determined that the proposed regulations would not affect small businesses since the responsibility of compliance is placed with the individual licensee.

CONSIDERATION OF ALTERNATIVES

The Physical Therapy Board of California must determine that no reasonable alternative which it considered or that has otherwise been identified and brought to its attention would either be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome on affected private persons than the proposal described in this Notice.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above-mentioned hearing.

INITIAL STATEMENT OF REASONS AND INFORMATION

The board has prepared an initial statement of the reasons for the proposed action and has available all the information upon which the proposal is based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the initial statement of the reasons and all of the other information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the Physical Therapy Board of California at 1418 Howe Avenue, Suite 16, Sacramento, California 95825.

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All the information upon which the proposed regulations are based is contained in the rulemaking file that is available for public inspection by contacting the person named below.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below or by accessing the website listed below.

CONTACT PERSON

Inquiries concerning the proposed administrative action or the substance of the proposed regulations may be addressed to:

Elsa Ybarra
1418 Howe Avenue, Suite 16
Sacramento, CA 95825

(916) 561- 8200 Ext. 8262
(916) 263-2560—Fax Number
Elsa_Ybarra@dca.ca.gov

The backup contact person is:

Steve Hartzell
1418 Howe Avenue, Suite 16
Sacramento, CA 95825
(916) 561-8200 Ext. 8250
(916) 263-2560—Fax Number
Steve_Hartzell@dca.ca.gov

Inquiries concerning the substance of the proposed regulations may be directed to Elsa Ybarra at (916) 561-8200 Ext. 8260.

Website Access: Materials regarding this proposal can be found at www.ptb.ca.gov.

GENERAL PUBLIC INTEREST

DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING

NOTICE IS HEREBY GIVEN that the prospective contractors listed below have been required to submit a Nondiscrimination Program (NDP) or a California Employer Identification Report (CEIR) to the Department of Fair Employment and Housing, in accordance with the provisions of Government Code Section 12990. No such program or (CEIR) has been submitted and the prospective contractors are ineligible to enter into State contracts. The prospective contractor's signature on Standard Form 17A, 17B, or 19, therefore, does not constitute a valid self-certification. Until further notice, each of these prospective contracts in order to submit a responsive bid must present evidence that its Nondiscrimination Program has been certified by the Department.

ASIX Communications, Inc.
DBA ASI Telesystems, Inc.
21150 Califa Street
Woodland Hills, CA 91367

Bay Recycling
800 77th Avenue
Oakland, CA 94621

C & C Disposal Service
P. O. Box 234
Rocklin, CA 95677

Choi Engineering Corp.
286 Greenhouse
Marketplace, Suite 329
San Leandro, CA 94579

Fries Landscaping
25421 Clough
Escalon, CA 95320

Marinda Moving, Inc.
8010 Betty Lou Drive
Sacramento, CA 95828

MI-LOR Corporation
P. O. Box 60
Leominster, MA 01453

Peoples Ridesharing
323 Fremont Street
San Francisco, CA 94105

San Diego Physicians &
Surgeons Hospital
446 26th Street
San Diego, CA

Southern CA Chemicals
8851 Dice Road
Santa Fe Springs, CA 90670

Tanemura and Antle Co.
1400 Schilling Place
Salinas, CA 93912

Turtle Building Maintenance Co.
8132 Darien Circle
Sacramento, CA 95828

Univ Research Foundation
8422 La Jolla Shore Dr.
La Jolla, CA 92037

Vandergoot Equipment Co.
P. O. Box 925
Middletown, CA 95461

RULEMAKING PETITION DECISIONS

AIR RESOURCES BOARD

IN THE MATTER OF A PETITION BY: SMILAND PAINT COMPANY

DECISION DENYING PETITION

Pursuant to Government Code section 11340.7, the Air Resources Board (ARB or Board) hereby responds to the petition submitted by the Law Offices of Smiland & Khachigian (Petition) on behalf of the Smiland Paint Company and its subsidiaries (SPC). The Petition requests the ARB to either: (1) repeal regulations that, according to SPC, were adopted by the ARB on July 24, 2003, or (2) amend the

regulations in accordance with SPC's written and oral comments. As discussed below, the ARB denies the petition.

The Petition was received by the ARB on August 4, 2003. It begins by stating that on July 24, 2003, the ARB adopted regulations that would impose fees on certain manufacturers of architectural coatings under Health and Safety Code section 39613. The Petition further describes how SPC submitted written and oral comments on the proposed regulatory action, and how the California Administrative Procedure Act (APA) (Government Code sections 11340 et seq.) requires the ARB to prepare a Final Statement of Reasons that responds to each of the comments submitted by SPC. SPC then summarizes these comments and concludes by petitioning the ARB, pursuant to Government Code section 11340.6, to either repeal the regulations or amend them as requested in SPC's comments.

The regulatory action addressed in the Petition was proposed by the ARB staff in a notice and Initial Statement of Reasons released on June 6, 2003. The proposed regulatory action would, among other things, provide for the ARB Executive Officer to assess annual fees on manufacturers of consumer products and architectural coatings as specified in AB 10X (Stats. 2003, Chapter 10X). The proposed regulatory action would add new sections 90800.75, 90800.9, and 90804 to title 17 of the California Code of Regulations (CCR), and would amend existing sections 90800.8, 90801, 90802, and 90803, title 17, CCR. The authority to adopt this regulatory action and to take the action requested by the Petition is contained in Health and Safety Code sections 39600, 39601, 39612, and 39613. The notice, Initial Statement of Reasons, proposed regulations, and subsequent rulemaking documents can be found on the ARB internet site at: www.arb.ca.gov/regact/feereg03/feereg03.htm.

On July 24, 2003, the Board held a public hearing to consider the proposed regulatory action. At the hearing, the Board did not take final action to adopt the proposed regulations. Instead, the Board approved Resolution 03-20, which states (on page 5) that the Board "... is initiating steps toward the final adoption of the regulatory amendments ..." Resolution 03-20 then goes on to state:

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to take final action to adopt the regulatory amendments set forth in Attachment A, with the modifications set forth in Attachment B and such other conforming modifications as may be appropriate, after making the modified regulatory language and any additional supporting documents and information available to the public for a period of 15 days, provided that the Executive Officer shall consider such written comments as may be submitted during this period,

shall make such modifications as may be appropriate in light of the comments received, and shall present the regulatory amendments to the Board for further consideration if she determines that this is warranted.

The Board delegated final adoption authority to the Executive Officer in order to meet the requirements of the APA (Government Code sections 11340 et seq.). The APA requires that whenever an agency makes a significant change to a proposed regulation that has been made available for public review, it must provide an additional public comment period of at least 15 days (commonly known as a "15-day comment period"; see Government Code section 11346.8(c)). The APA further requires that an agency cannot take final action to adopt the regulation until all modifications to the originally proposed regulatory language have been made available for this additional 15-day comment period (Government Code section 11346.8(c)). This is why the Board delegated the responsibility to adopt the amendments to the ARB Executive Officer.¹ Under this process, which the ARB has followed for many years in rulemakings where 15-day modifications are made, the Executive Officer will sign an Executive Order that will formally adopt the regulations. The ARB's standard practice is for the Executive Order to be signed shortly before the regulatory action is submitted to the Office of Administrative Law, after all comments have been considered and the Final Statement of Reasons has been prepared.

The Petition is therefore based on the incorrect assumption that the ARB took final action to adopt the regulations at its July 24, 2003 public hearing. As described above, the ARB has not yet taken final action to adopt the proposed regulations. The regulatory adoption process under the APA is still ongoing and has not yet been completed. If the Executive Officer ultimately concludes that SPC or some other commenter has raised valid issues and that additional regulatory modifications are appropriate, then the Executive Officer will either make such modifications or will return to the Board, as specified in the portion of Resolution 03-20 set forth above. The Petition is simply premature; the ARB must complete the administrative process of adopting regulations before the agency can consider repealing or amending them. At the present time, the final text of the regulations is still under consideration and no adopted "regulations" yet exist to repeal or amend.

Based on the reasons stated above, the Petition of the Smiland Paint Company and its subsidiaries is denied. If you have any questions, please call the

¹ Delegation to the Executive Officer is authorized by Health and Safety Code sections 39515 and 39516.

agency contact person: Robert Jenne, Senior Staff Counsel, at (916) 322-3762. Interested persons may obtain a copy of the Petition from the ARB upon request.

PRECEDENTIAL DECISION INDEX

INDUSTRIAL MEDICAL COUNCIL

NOTICE OF AVAILABILITY OF PRECEDENTIAL DECISIONS AND INDEX OF THE INDUSTRIAL MEDICAL COUNCIL GOVERNMENT CODE SECTION 11425.60

NOTICE IS HEREBY GIVEN that the California Industrial Medical Council, pursuant to the requirements of section 11425.60 of the Government Code, maintains an index of precedent decisions. The index is available to the public by annual subscription from the Discipline Unit, Industrial Medical Council, 395 Oyster Point Suite 102, South San Francisco, Ca. 94080. The text of the decisions themselves, as well as the index, can be viewed by appointment at the above address or accessed at any time on the internet at <http://www.dir.ca.gov/IMC/discipline.html>, under the "Precedential Decisions" section.

SUMMARY OF REGULATORY ACTIONS

REGULATIONS FILED WITH SECRETARY OF STATE

This Summary of Regulatory Actions lists regulations filed with the Secretary of State on the dates indicated. Copies of the regulations may be obtained by contacting the agency or from the Secretary of State, Archives, 1020 O Street, Sacramento, CA, 95814, (916) 653-7715. Please have the agency name and the date filed (see below) when making a request.

Enhancing Education Through Technology

In this regulatory action, the Superintendent of Public Instruction (Department of Education) adopts regulations relating to competitive grants for technology-related funding under the "Enhancing Education through Technology Grant Program."

Title 5
California Code of Regulations
ADOPT: 11971, 11972, 11973, 11974, 11975,
11976, 11977, 11978, 11979, 11979.5

Filed 08/26/03
Effective 08/26/03
Agency Contact: Debra Strain (916) 319-0641

CALIFORNIA ARCHITECTS BOARD Regulations Unit

The California Architects Board is amending sections 109 and 111(a) of title 16, California Code of Regulations by amending the incorporated form, Application for Eligibility Evaluation Form No. 19C-1, and Test Application Form No. 19C-11 (Architect Registration Examination). The new revision for both forms is 7/2003. The language at the bottom of the forms regarding the disclosure of the individual's social security number has a reference change from Welfare and Institutions Code section 11350.6 to Family Code Section 17520 (Stats. 1999, ch. 478; Stats. 1999, Ch. 652).

Title 16
California Code of Regulations
AMEND: 109, 111(a)
Filed 08/26/03
Effective 08/26/03
Agency Contact: Sue Martin (916) 327-3884

CALIFORNIA GAMBLING CONTROL COMMISSION

License Renewal Fee

This emergency rulemaking requires a state gambling licensee to apply for renewal of a state gambling license, and pay the renewal fee of \$500.

Title 4
California Code of Regulations
ADOPT: 12250
Filed 08/25/03
Effective 08/25/03
Agency Contact: Herb Bolz (916) 263-0700

COMMISSION ON PEACE OFFICER STANDARDS AND TRAINING

PC 832 Arrest & Firearms Course, Racial Profiling Training Basic Courses

This action updates and reorganizes the PC 832 Arrest and Firearms Course and related provisions.

Title 11
California Code of Regulations
AMEND: 1005, 1080, 1081
Filed 08/21/03
Effective 01/01/04
Agency Contact: Leah Cherry (916) 227-3891

DEPARTMENT OF CORRECTIONS Intake Process

This is a nonsubstantive change amending the "Reception Center Readmission Summary," CDC Form 816 (Rev. 02/03), used by intake staff for the processing of parole violators being returned to

custody or readmitted with a new term. The layout of the form is changed, providing intake staff with more specific information to fill in, boxes to check, and data to gather from other existing forms and regulations.

Title 15

California Code of Regulations

AMEND: 3075.1

Filed 08/21/03

Effective 09/20/03

Agency Contact: Cassie Mraz (916) 324-6776

DEPARTMENT OF FOOD AND AGRICULTURE

Tree Fruit Containers

This action amends existing tree fruit container standards by increasing the maximum permissible inside depth of container 35 and authorizes the use of new container 36 for apricots, nectarines, peaches, plums and fresh prunes.

Title 3

California Code of Regulations

AMEND: 1380.19 (b), (q), (r), (t), 1402.12, 1446.7, 1454.14, 1462.15

Filed 08/26/03

Effective 08/26/03

Agency Contact: Gary Manning (916) 654-0941

DEPARTMENT OF FOOD AND AGRICULTURE

Bovine Trichomonosis Control Program

This regulatory action establishes the requirements for the control of bovine trichomonosis in California. (Previous OAL file # 03-0418-08S)

Title 3

California Code of Regulations

ADOPT: 820, 820.1, 820.2, 820.3, 820.4, 820.5, 820.6, 820.7, 820.8

Filed 08/21/03

Effective 09/20/03

Agency Contact: Nancy Grillo (916) 651-7280

DEPARTMENT OF FOOD AND AGRICULTURE

Informal Hearing Procedures

In this regulatory action, the Department of Food and Agriculture sets forth procedures for appeals and informal hearings in relation to specified matters involving the Department's Animal Health Branch.

Title 3

California Code of Regulations

ADOPT: 1310, 1310.1, 1310.2, 1310.3

Filed 08/26/03

Effective 08/26/03

Agency Contact: Nancy Grillo (916) 651-7280

DEPARTMENT OF HEALTH SERVICES

Clinical Laboratory Specialist Licensing

This is the certification of compliance for an action adopting two regulations that require specialty licensing of persons performing high complexity tests in the

specialties of cytogenetics and genetic molecular biology, with specified exceptions, and specify the minimum requirements for issuance of state limited clinical laboratory scientist licenses in these two specialties.

Title 17

California Code of Regulations

ADOPT: 1031.2, 1031.3

Filed 08/21/03

Effective 08/21/03

Agency Contact:

Charles E. Smith (916) 657-0730

DEPARTMENT OF INSURANCE

Credit Insurance Agents

This emergency rulemaking establishes the regulatory scheme for licensing and regulating credit insurance agents. (Previous OAL file # 03-0423-01 E. Other related OAL file ## 01-0905-01E, 02-0129-02EE, 02-0531-04EE)

Title 10

California Code of Regulations

ADOPT: 2192.1, 2192.2, 2192.3, 2192.4, 2192.5, 2192.6, 2192.7, 2192.8, 2192.9, 2192.10, 2192.11, 2192.12, 2192.13

Filed 08/26/03

Effective 08/26/03

Agency Contact: George Teekell (415) 538-4390

DEPARTMENT OF INSURANCE

Prelicensing and Continuing Education

Senate Bill No. 63 (ch. 174, stats. 2001) added subdivision (f) to section 1749 of the Insurance Code. The new subdivision (f) provides that an applicant for a fire and casualty broker-agent license who is licensed as a personal lines agent shall complete a minimum of 20 hours prelicensing study as a prerequisite and that the "...curriculum for satisfying this requirement shall be approved by a curriculum board and submitted to the commissioner for final approval. . . ." This filing is a certificate of compliance for an emergency regulatory action requiring that any course taken to satisfy this requirement shall be in a classroom and shall use the general subject matter derived from the curriculum specified in the regulation.

Title 10

California Code of Regulations

ADOPT: 2187.4

Filed 08/21/03

Effective 08/21/03

Agency Contact: Natasha R. Ray (916) 492-3559

DEPARTMENT OF INSURANCE

Holocaust Victim Insurance Relief Act 1999- Holocaust Insurance Registry

This emergency readoption establishes procedures for insurance companies doing business in California

to comply with the reporting requirements of the Holocaust Victim Insurance Relief Act of 1999.

Title 10

California Code of Regulations

ADOPT: 2278, 2278.1, 2278.2, 2278.3, 2278.4, 2278.5

Filed 08/25/03

Effective 08/25/03

Agency Contact: Leslie Tick (415) 538-4190

DEPARTMENT OF INSURANCE

Procedures Governing Prohibited Persons

The regulatory action deals with procedures governing prohibited persons. (Prior OAL File 03-0124-02S; Department of Insurance File RH 01 01 6450.)

Title 10

California Code of Regulations

ADOPT: 2175.6, 2175.7, 2175.8, 2175.9, 2178

Filed 08/21/03

Effective 08/21/03

Agency Contact: Natasha R. Ray (916) 492-3559

DEPARTMENT OF JUSTICE

**Laboratory Certification, Firearms Safety Devices
Gun Safe Standards**

This rulemaking action makes permanent the emergency changes to regulations for testing of firearms safety devices and gun safes and amends the emergency regulations. It addresses definitions of "ATF," "Disabled," and "Lock Box"; approval of untested firearms safety devices; submission of firearms safety devices for testing; the rendering of a firearms safety device inoperable; prevention of removal and access to a firearm in a lock box; the time period for manipulation of firearms safety devices; testing of complete firearms; when a firearm is rendered inoperable; testing of lock boxes with a small handgun inside; manipulation with a screwdriver; partial destruction attacks on a firearm; cutting of cable devices with lineman pliers; the "plug pulling test"; the "plug torque test"; "the sawing test"; large or heavy lock boxes; drop testing of lock boxes; gun safes certified by a Nationally Recognized Testing Laboratory to Underwriters Laboratory Residential Security Container rating standards; proof of ownership of gun safes of unknown make or model; and, proof of ownership of acceptable lock box firearms safety devices.

Title 11

California Code of Regulations

ADOPT: 977.52 AMEND: 977.20, 977.43, 977.44, 977.45, 977.50, 977.51

Filed 08/25/03

Effective 08/25/03

Agency Contact: Steven Teeters (916) 263-0849

FISH AND GAME COMMISSION

Dog Training & Organizational Field Trail Permits

The Fish and Game Commission is amending the captioned section by removing authority citations Fish and Game Code sections 3509 and 3510 due to the fact that they were repealed (Stats. 2002, Ch. 453) and by removing reference citation Fish and Game Code section 3517 which was repealed (Stats. 1994, Ch. 49). The Commission is adding reference citations Fish and Game Code sections 3511 and 3513-3516 which pertain to fully protected birds, migratory nongame birds/ protection, exotic nonresident game birds/ definition, release of exotic nonresident game birds/ approval of commission, and rules and regulations.

Title 14

California Code of Regulations

AMEND: 677

Filed 08/21/03

Effective 09/20/03

Agency Contact: John M. Duffy (916) 653-4899

NEW MOTOR VEHICLE BOARD

Dismissal of Protests, Changes of Venue, Fees

This regulatory action provides for the dismissal of protests, change in venue, waiver of fees, and credit card payment of fees.

Title 13

California Code of Regulations

ADOPT: 551.10 AMEND: 551.8, 553, 553.40

Filed 08/21/03

Effective 09/20/03

Agency Contact:

Howard Weinberg (916) 445-2080

**OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD**

Monorail Hoists, Monorail Cranes and Track

The regulatory action deals with monorail hoists, monorail cranes and track.

Title 8

California Code of Regulations

AMEND: 2561.31, 2561.32, 4885, 5022

Filed 08/25/03

Effective 09/24/03

Agency Contact: Marley Hart (916) 274-5721

**OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD**

Protection from Falling Objects

This regulatory action adopts standards for protection from falling objects.

Title 8

California Code of Regulations

AMEND: 3273

Filed 08/26/03

Effective 09/25/03

Agency Contact: Marley Hart (916) 274-5721

**OFFICE OF SPILL PREVENTION AND
RESPONSE**

Certificate of Financial Responsibility

This is a nonsubstantive action amending several declaration statements under penalty of perjury and delegation of authority statements used by applicants applying for a Certificate of Financial Responsibility for operators or owners of tank vessels, nontank vessels, owners of oil, mobile transfer units, and marine facilities.

Title 14

California Code of Regulations

AMEND: 791.7

Filed 08/21/03

Effective 08/21/03

Agency Contact:

Joy D. Lavin-Jones (916) 327-0910

STATE ALLOCATION BOARD

Leroy F. Greene School Facilities Act of 1998—
LCP Grant Adjustment

Subdivision (e) of section 1771.7 of the Labor Code, as enacted in Assembly Bill 1506, Chapter 868, Statutes of 2002, requires that the State Allocation Board increase as soon as feasible, but no later than July 1, 2003, the per pupil grant amounts as described in sections 17072.10 and 17074.10 of the Education Code to accommodate the state's share of the increased costs of new construction or modernization projects due to the initiation and enforcement of labor compliance programs. This emergency regulatory action increases the per pupil grant amounts to implement this statutory directive.

Title 2

California Code of Regulations

ADOPT: 1859.71.4, 1859.78.1 AMEND: 1859.2, 1859.73.2, 1859.79.2, 1859.82, 1859.83, 1859.125, 1859.125.1, 1859.145

Filed 08/25/03

Effective 08/25/03

Agency Contact: Lisa Jones (916) 322-1043

**STATE WATER RESOURCES CONTROL BOARD
Electronic Submission of Laboratory Data for UST
Reports**

The regulatory action is the readoption of emergency regulations that dealt with the electronic submission of laboratory data for underground storage tank reports. (Prior OAL files 03-0418-04EE, 02-1227-03EE, 02-0816-03EE, 01-0522-01ER and 01-0228-03E.)

Title 23

California Code of Regulations

ADOPT: 2729, 2729.1

Filed 08/26/03

Effective 08/30/03

Agency Contact: Kevin Graves (916) 341-5782

**STATE WATER RESOURCES CONTROL BOARD
Wastewater Treatment Plant Operator Certification**

This emergency regulatory action raises the fees for the Wastewater Treatment Plant Classification and Operator Certification Program. (Related OAL file # 03-0305-03EE)

Title 23

California Code of Regulations

ADOPT: 3717

Filed 08/21/03

Effective 08/21/03

Agency Contact: Sandy Malos (916) 341-5731

**CCR CHANGES FILED WITH THE
SECRETARY OF STATE
WITHIN APRIL 23, 2003
TO AUGUST 27, 2003**

All regulatory actions filed by OAL during this period are listed below by California Code of Regulation's titles, then by date filed with the Secretary of State, with the Manual of Policies and Procedures changes adopted by the Department of Social Services listed last. For further information on a particular file, contact the person listed in the Summary of Regulatory Actions section of the Notice Register published on the first Friday more than nine days after the date filed.

Title 1

07/01/03 AMEND: 1038

05/08/03 REPEAL: 121, 122, 123, 124, 125, 125.5, 126, 127, 128, App. A (Form 1013)

Title 2

08/25/03 ADOPT: 1859.71.4, 1859.78.1 AMEND: 1859.2, 1859.73.2, 1859.79.2, 1859.82, 1859.83, 1859.125, 1859.125.1, 1859.145

08/18/03 AMEND: 599.515

08/14/03 ADOPT: 18531.5

08/13/03 AMEND: 41000

08/01/03 ADOPT: 22100, 22110, 22120, 22130

07/29/03 AMEND: 18404.1

07/14/03 AMEND: Chapter 55, Section 54400

07/14/03 AMEND: 649.11

07/14/03 AMEND: 56800

07/07/03 ADOPT: 1859.77.3 AMEND: 1859.2, 1859.77.2

06/19/03 AMEND: 1859.2, 1859.20, 1859.21, 1859.74.2, 1859.74.3, 1859.74.4, 1859.75, 1859.75.1, 1859.78.3, 1859.79, 1859.81.1, 1859.83, 1859.107, 1859.145

06/16/03 ADOPT: 18530.2

06/13/03 ADOPT: 1859.160, 1859.161, 1859.162,
1859.162.1, 1859.163, 1859.164,
1859.164.1, 1859.165, 1859.166,
1859.166.1, 1859.167, 1859.168,
1859.169, 1859.170, 1859.171 AMEND:
1859.2, 1859.51, 1859.103, 1859.106,
1859.145.1
06/12/03 AMEND: 1859.77.2
06/12/03 AMEND: 1555
06/12/03 ADOPT: 18329.5
06/10/03 ADOPT: 18702.5 AMEND: 18702,
18702.1
06/04/03 ADOPT: 649.23, 649.24, 649.25
05/08/03 AMEND: 2970
05/07/03 AMEND: 547.80, 17030, 17111, 17112,
17151 REPEAL: 547.81, 17434
05/07/03 ADOPT: 471.1 AMEND: 470, 470.1,
471, 472, 17502, 17520
05/01/03 AMEND: 1859.61, 1859.105, 1859.106,
1859.141, 1859.142, 1859.145, 1859.147,
1859.148, 1859.150.1, 1859.151,
1859.152, 1859.153
04/28/03 AMEND: 1897

Title 3

08/26/03 ADOPT: 1310, 1310.1, 1310.2, 1310.3
08/26/03 AMEND: 1380.19 (b), (q), (r), (t),
1402.12, 1446.7, 1454.14, 1462.15
08/21/03 ADOPT: 820, 820.1, 820.2, 820.3, 820.4,
820.5, 820.6, 820.7, 820.8
08/12/03 AMEND: 4500
07/29/03 ADOPT: 760, 760.1, 760.2, 760.3, 760.4,
760.5, 760.6, 760.7, 760.8, 760.9
07/28/03 ADOPT: 3650, 3651, 3652, 3653, 3654,
3655, 3656, 3657, 3658, 3659, 3660,
3661, 3662, 3663, 3663.5
07/24/03 AMEND: 3417(b)
07/10/03 AMEND: 3700(c)
07/08/03 AMEND: 3700(c)
07/03/03 ADOPT: 755, 755.1, 755.2, 755.3, 755.4,
755.5, 755.6, 756, 756.1, 756.2, 756.3,
757, 758, 758.1, 759 AMEND: 753.2
REPEAL: 757, 759, 759.1, 759.2, 759.3,
759.4, 759.5
06/26/03 AMEND: 3417(b)
06/12/03 AMEND: 3423(b)
06/03/03 AMEND: 3417
06/02/03 REPEAL: 796
05/28/03 ADOPT: 1392.12
05/22/03 AMEND: 6860
05/19/03 ADOPT: 6450, 6450.1, 6450.2, 6450.3,
6784 AMEND: 6000 REPEAL: 6450,
6450.1, 6450.2, 6450.3, 6784
05/05/03 ADOPT: 1310, 1310.1, 1310.2, 1310.3
04/24/03 AMEND: 6000, 6710

Title 4

08/25/03 ADOPT: 12250

08/18/03 AMEND: 12101, 12122
07/14/03 ADOPT: 10151, 10152, 10153, 10154,
10155, 10156, 10157, 10158, 10159,
10160, 10161, 10162
06/26/03 AMEND: 12100, 12101, 12104, 12105,
12120, 12122, 12124, 12126, 12128,
12130, 12132, 12140, 12142
06/16/03 ADOPT: 12370
05/22/03 ADOPT: 12300, 12301, 12302, 12304,
12305, 12306, 12307, 12308, 12309,
12310 AMEND: 12301, 12303, 12309

Title 5

08/26/03 ADOPT: 11971, 11972, 11973, 11974,
11975, 11976, 11977, 11978, 11979,
11979.5
07/31/03 AMEND: 80014, 80015, 80015.1, 80023
REPEAL: 80085, 80085.1, 80086, 80087,
80088, 80412, 80413.2, 80414, 80422,
80680-80690.1
07/21/03 ADOPT: 1068-1074
07/18/03 ADOPT: 80473, 80473.1
07/03/03 AMEND: 51023.5
06/20/03 ADOPT: 13075
06/16/03 ADOPT: 9531, 9532
05/15/03 ADOPT: 24000, 24001, 24002, 24003,
24004, 24005, 24006, 24007, 24008,
24009
05/01/03 ADOPT: 1218.5 AMEND: 1200, 1204,
1209, 1211, 1212, 1215, 1216, 1217,
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